4-26-1993

Motions 1993 volume 6 number 7

University of San Diego School of Law Student Bar Association

THE NEWSPAPER OF THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

April 26, 1993

MOTIONS

VOL. VI, NO. 7

BRAD FIELDS: *New SBA President-elect discusses his agenda on page 6.*

Reflections on an Election

By Tom Turner

Motions Staff writer

After an election in which more than 500 students voted, approximately double the number voting last year, the campaign rubble clears around a new board of SBA leaders.

This was not an entirely regular election, though. Besides the unusually high turnout, other interesting demographic patterns and events took place.

Denise Hickey, the new Day Vice-President, was forced into a run-off election even though she technically had more than 50% of the vote. Since ten students voted for write-in candidates, she fell three votes short of winning the position outright.

By comparison, write-in candidate John Wallner, the new 4L evening rep, won his hotly contested race by drawing two votes versus the one cast for his opponent. Wallner's most recent previous campaign was for the 1992 49th Congressional district, the seat won by Lynn Schenk. Wallner remarked, "The SBA campaign was a lot easier."

An interesting power structure continues to flex its muscle within the SBA. The current 2Ls, more specifically last year's Section B, again exerted considerable influence over the election.

For the last two elections students have voted Section B candidates into five of the ten executive board positions. Excluding the evening VP position, for which Section B students were ineligible, they have controlled five of eight executive positions on the 1992-93 and 1993-94 boards. They include Brad Fields twice, Dan McNamee, Geoff Graves

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Sexual Harassment
Does the current legal solution help or hinder workplace harassment?
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Justice Blackmun Speaks at USD

Close Encounters with Students, Faculty, and Old Friends

By Stacie L. Brandt

Motions Editor in Chief

Supreme Court Associate Justice Harry A. Blackmun visited USD April 7 as the ninth Nathanson Memorial Lecturer. He spoke about change in America to an audience of 800 in Shiley Auditorium.

In his lecture, Blackmun identified the three most difficult issues before the Court last year as being abortion, redistricting, and the death penalty. While the author of *Roe v. Wade* considers abortion issues to be legally settled, he shared his personal feeling that the death penalty is immoral but not unconstitutional.

For some, the visit was a more personal experience. Earlier in the day, Blackmun surprised Dean Strachan's first year Civil Procedure class with a visit which featured a question and answer format.

Asked which case was most challenging, he replied: "You expect me to say *Roe v. Wade*, but, in truth, every question that comes to the level of the Supreme Court is challenging."

Blackmun told the class that *Flood v. Kuhn*, about baseball free agency, was the opinion he most enjoyed writing. (See excerpt, page 19.) "Two of my brethren wouldn't join me in my sentimental journey. One was Chief Justice Burger, who may have thought it was beneath the dignity of the Court for me to indulge in this. The other, of all people, was Byron White...."

On the nomination selection process: "I don't think it will be as rough as the Thomas hearings. I think they hurt the Court." Recalling his own nomination hearing, Blackmun recalled in particular his exchange with Senator Kennedy. "He alone of everybody there called me 'Mr. Nominee,' not 'Judge.' He asked, 'Can you communicate with the young people of today?' This was in 1970. I said, 'Senator, our oldest daughter is a constituent of yours; she lives in Massachusetts, and she thinks you are the most wonderful senator.' We were friends from then on."

Blackmun told the class that Laurence Tribe has been mentioned as a possible White successor.

Describing the conferences in which the Court discusses cases, Blackmun said, "The best seat, I think, is in the center of the three on one side. You have enough elbow room. When I had that seat, it meant I had my backside to the fireplace. Chief Justice Burger always kept the room at about 60 degrees, so the fire kept half of me warm. Thurgood Marshall always was the fire lighter,...and it couldn't be lit unless the majority voted for it. The decision was usually 5 to 4, of course."

On conference voting: "We vote by seniority.... If the Chief is in the majority, he makes the opinion assignment. If not, the senior does.... Assignment power is a tradition and probably a good one. The public is not aware of the significance of it....It's a perk. If the case has a lot of publicity potential, really a major case, usually the Chief will keep it for himself. If it's a tax or ERISA case, it goes to the poor junior.... Sometimes an opinion is the product of compromise. The public doesn't appreciate this. To get the five votes, your opinion may come out in a way that you wouldn't have written it."

On tax cases: "Most of the justices are uncomfortable with tax cases. I feel I'm not because when I was [practicing], I was assigned to the tax department. It was the best thing that ever happened to me. I did nothing else for six years.... Byron White and I get most of the tax cases."

On the arrival of a new justice: "When somebody new comes to the Court, the dynamics change. When Sandra came on, I had always known how Potter would vote, but I didn't kow how Sandra would vote. It takes perhaps a year to adjust.... I think the conservative wing of the Court is in control and has been for some time.... But strangely enough, they haven't taken control of the Court in an abrupt, peremptory fashion - which means, in my view, that they're behaving as justices should.

"Justices don't always act the way their appointing presidents expected them to act. Felix Frankfurter was regarded as a great liberal when FDR appointed him. I sat at his feet in law school. He became a conservative...and once said, 'I haven't changed; the Court has changed under me.' ...I get the same accusation, but in the opposite direction."

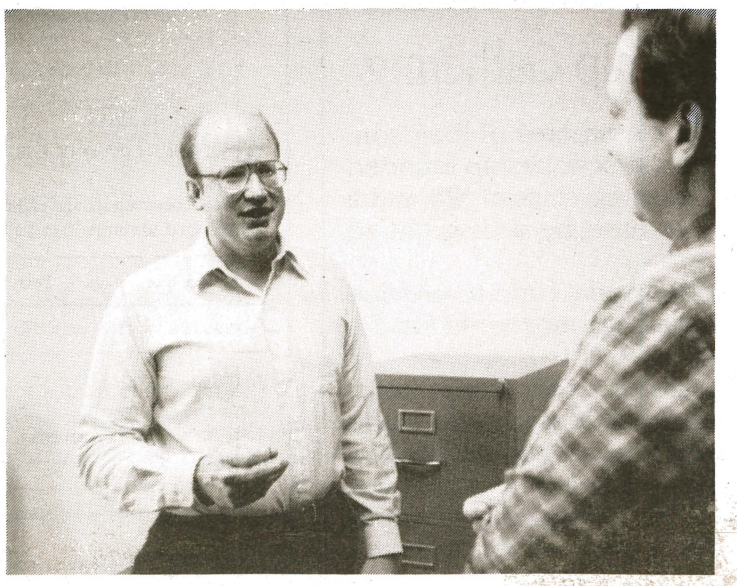
Professor Lee's Crim Pro II class met with Blackmun for lunch (See article, page 10.) After these classroom experiences, Blackmun was heard to remark, "I haven't ruined them, have I?"

The USD law faculty and invited alumni had their opportunity to meet Blackmun

See **BLACKMUN** *page 11*

JUSTICE BLACKMUN: *The ninth Nathanson lecturer spoke about change in America April 7 to an audience of 800 at USD.*

Chris Wonnell Voted Professor of the Year in Run-Off



PROFESSOR WONNELL: *Discussing a fine legal point with fellow professor Kevin Cole.*

By James Kuperstein

Motions Staff writer

Professor Chris Wonnell was named Professor of the Year for the 1992-93 term after a run-off election in the Spring SBA election.

This is the first time Wonnell has won this distinction. He has been teaching at USD Law since 1984. After graduating from Northwestern Univ. Phi Beta Kappa in 1979 with a degree in economics, he contemplated graduate school in economics, but decided instead on law school. "I was in debate when I was in college, and most people in debate went on to law school. I think I regarded that as a natural progression."

Wonnell attended Michigan State Law School, where he was an associate editor of the *Michigan Law Review*. He is a member of the Order of the Coif and earned his J.D. in 1982.

From 1982 until 1984, Wonnell was an associate at the law firm

See **WONNELL** *page 4*

Honor Court Suspends Student; Faculty Confirms

By Robert Little
Motions Staff writer

The Law School Honor Court announced and published its conviction of a student prosecuted for plagiarism April 6. In a ten page unanimous opinion, the court explained its conclusions of fact and sentenced the unnamed student to a two year suspension. Dean Kristine Strachan deferred required approval of the conviction and sentence to the April 16 meeting of the faculty.

The faculty voted twenty to four to confirm the verdict and sentence passed by the Honor Court. Dissenting faculty voiced concern that the Honor Court was neither aware of, nor following, precedent.

The decision, which is the longest opinion in USD Honor Court history, is on reserve at the Legal Research Center. The opinion identifies the defendant as "Student A." After noticing similarities between two open memo assignments, Lawyering Skills I instructor Mark Broida turned the two memos over to Prof. Steven Hartwell and Chris Harrington for a preliminary hearing. After determining that there existed sufficient evidence to bring charges in the Honor Court, Hartwell and Harrington turned the case over to Honor Court Prosecutor Mary Katherine Fowler.

In the hearing before the Honor Court, LL.M. student Douglas Wade represented the defendant, and Fowler and Peter Salmon presented the prosecution. Fowler, who presented the opening argument, turned the case over to Salmon to continue to prosecution after she developed an irresolvable time conflict.

The Honor Court heard live testimony from Student A's sister, who typed the paper, and the student whose memo was copied (who was acquitted in a separate action); numerous written statements, including statements from the accused, were presented. Student A chose neither to testify nor attend the trial.

The opinion notes that "as even a cursory examination of the papers reveals, the papers are so similar that they could not realistically both be the product of entirely independent work."

Student A through her counsel stipulated that the papers were substantially identical, but that she had accidentally given the other student's handwritten memo to her sister to type, then turned in the typed version without realizing that it was not her own.

The court explicitly rejected this explanation, noting differences between the handwritten version and the typed version, which allegedly were made to prevent Broida from noticing the substantial similarity between the memos.

The court further noted that Student A's account requires the court to believe "that a series of unlikely events occurred." That Student A borrowed the other student's memo intending to return it in five minutes, thought she had returned it, but actually had gone home with it. That Student A handed her sister both her memo and the other student's memo without telling her which to type. That although the typist was to type the handwritten memo without changes, she made some changes in phrasing. That the typist did not recognize that the memo was not in her sister's handwriting and did not mention to Student A that she had given her two memos.

Student A, in the Masters of Comparative Law program, may not return to USD until Fall, 1995. A copy of the opinion will be placed in her student file and made available to state bars upon request.

Sitting on the Honor Court were students Chief Justice Michel Duquella, Gregory Cribbs and N.K. Rodriguez, and professors Kevin Cole, Christopher Wonnell and John Minan. The court holds *in camera* proceedings and can impose a variety of sanctions, from expulsion to warning, with approval of the Dean or by faculty vote.

Under the Honor Court bylaws, the Dean may defer to the faculty as a whole if she "fails to accept" the recommendation of the court. The Dean noted her opinion in a memorandum to the faculty: "While I personally believe that the 2 year suspension imposed is entirely appropriate, it is clearly disproportionate in terms of past practice."

The court's opinion noted that suspension is a less severe punishment compared to recent similar cases but cited as a mitigating factor "well-documented" defense evidence of illness and prescribed medication.

Cole, who wrote the per curium opinion, noted in an interview that Student A's conduct ranked "pretty far up the scale of seriousness" among academic violations. The court, he continued, had to "do what's right and let the chips fall where they may." Fowler noted that "technical violations are a different issue; when the violation is severe, punishment should be commensurate."

USD School of Law Improves Ranking

By Eric Siegler
Motions Staff writer

In the annual survey of law schools conducted by *U.S. News and World Report*, the University of San Diego School of Law has risen in the rankings from the third quartile last year to the second quartile this year. Each quartile represents 25 percent of the 176 accredited law schools. The rankings are determined by scores from five categories: student selectivity, placement success, faculty resources, academic reputation and lawyer/judge reputation.

According to the survey, Yale captured the number one position for the third consecutive year, while Harvard placed second. USD ranked 69th in academic reputation as determined by a survey of deans and senior faculty across the nation. However, USD ranked 98th in a survey of lawyers, judges, and hiring partners. USD's median LSAT score was 160, the acceptance rate 25.4% of applicants, and the average starting salary last year was reported to be $55,000.

California Schools as Ranked by U.S. News and World Report

School	Rank
Stanford University	3
UC Berkeley	12
UCLA	17
USC	18
UC-Hastings	23
UC-Davis	first quartile (25%)
Loyola	second quartile (50%)
USD	second quartile (50%)
California Western	third quartile (75%)
Pepperdine	third quartile (75%)
Santa Clara	third quartile (75%)
Southwestern U.	third quartile (75%)
USF	third quartile (75%)
U. of Pacific-McGeorge	third quartile (75%)
Golden Gate U.	fourth quartile (bottom 25%)
Whittier College	fourth quartile (bottom 25%)

Michael Konz Remembered at Scholarship Gathering

Mr. and Mrs. Robert Konz met informally with former classmates of their son, Michael Konz, April 13 to remember Michael and discuss the scholarship founded in his name. Michael Konz, a member of the USD Law evening class of '94 and a General Dynamics human resources counselor, was murdered by a disgruntled employee during labor negotiations January 24, 1992.

Friends and the family established the Michael Konz Memorial Fund to provide book scholarships to deserving evening students. Scholarship recipients for the 1992-93 school year are Arne Rovell and Kim Seavey.

Serving on the scholarship selection committee are classmates Wendy Schmitt, Leslie Olson, Ken Roberts, Luke Ryan, and Mike Shevlin. Donations may be made through the USD Law Alumni Office. This year, members of the Class of '93 will also be able to designate their class gifts to the fund.

The events surrounding Michael Konz's death will be the subject of a segment of the new NBC news magazine, "Prime Story," dealing with violence in the workplace. It is expected to air June 20.

MOTIONS

The Newspaper of the University of San Diego School of Law

Founded in 1987
Previously The Woolsack, 1971-1987

Published between six and eight times each year. USD School of Law, Alcala Park, San Diego, California 92110.

Editor in Chief: Stacie L. Brandt — Publishing Director: Gregory T. Lyall

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1Ls Allege Special Study Groups Aid Too Few

By Eric Siegler
Motions Staff writer

Many law students have noticed the existence of special study groups for a small number of first year students. Complaints can be heard like, "I need the help more than those in the program," or "Those students receive unfair advantages."

The study group program is designed to assist 1Ls who need it in taking notes, outlining class lectures, and managing time and stress. The program offers this opportunity to students selected by a wide variety of criteria which includes, but is not limited to, writing ability, physical challenges, serious learning disabilities, GPA and LSAT scores, educational systems different from the norm, and past extreme hardship.

There is no absolute predictor of how a student will perform in law school, but the administrators of the program have found that certain traits and situations are indicative of a student who will need extra assistance.

The study groups meet once a week for each class in which the students are enrolled. Each group is comprised of approximately ten students from the same first year section. The group is mediated by a group leader who is chosen from 2Ls and 3Ls. These leaders go to their section's classes to ensure that their material corresponds to that taught by the different professors. The role of the leader is to get the students to ask and answer each other's questions. The leaders achieve this through the use of hypotheticals, their own first year experiences, and an informal atmosphere.

The 1Ls in the study group receive this assistance for both semesters. While the program currently allows people who perform well the first semester to remain in the program, possible ways to open up a spot for someone who struggled first semester are being discussed. Students not in the program who perform poorly first semester may be invited to join the program. For those not in the program who feel they are struggling, program director Janet Madden's office in the lawyering skills room is always open for a meeting to discuss other options available to the student.

The program provides clear benefits. The directors and leaders get to know their students and can give them the attention they need. If the program could get the funds to allow everyone in law school to participate, the directors would gladly expand it. However, for financial reasons the program is limited, and the selection process, no matter how accurate, will always seem to exclude someone who feels he or she should participate.

Last semester, the study group was part of a grade controversy. One study group leader for Professor Wohlmuth's evening Contracts class distributed questions that had been passed out the previous year. As it turned out, Professor Wohlmuth included those questions in his multiple choice section.

Students complained that study group members received an unfair advantage. Despite indications that neither the curve nor students' grades were affected, the administration and Professor Wohlmuth adjusted the grading curve to try and correct any problem. Most students' grades were unaffected, and no one's grade was lowered. A couple of students experienced a large shift upward of ten points, but in the long run of law school, the change will have little effect on class rank.

Ironically, the information that was made available through the study group was also available through any other student who had that class in past years. It is hard to imagine that, with access to second, third, and fourth year students so readily available, no other student had similar copies of these same questions.

Norris Takes Winters by Storm

Pamela Norris took first place in the annual Winters appellate advocacy competition for Lawyering Skills I students April 20. It was the first time in at least three years that an evening student did not win. Congratulations to the following 1Ls for winning Best Oral Argument in their Lawyering Skills classes:

Kevin Kravitz
Uley Norris
Anne-Margaret Bartish (tie)
Yuri Simpson
Julie Knudson (tie)
Anne Ligman
Robert Appel
Chris Hoffman
Karen Hagler
Robin Felix
Marie Kenny
Kendall Pasborg
Michael Rogers
Eric Prosser
Pamela Norris
Patrick Cooney (tie)
Richard Hidalgo
Stacy Yakubik
Greg Olson

Compliled by Eric Siegler

Pro Bono

Pro Bono Legal Advocates

By Shannon Goldman

PBLA sponsored Martha Matthews, staff attorney at the National Center for Youth Law, to speak to USD law students about careers in public interest law and her work at the National Center for Youth Law on March 31.

Ms. Matthews described public interest law as a network consisting of the Legal Services Corporation which sponsors Legal Aid, non-profit public interest organizations like those run by the San Diego Volunteer Lawyer Program, private firms that focus on public interest areas such as employment discrimination and environmental issues, and government positions.

Students can take some steps now to help get a public interest job later. Ms. Matthews recommended: working for a public interest employer during the summer, getting a fellowship or community service grant, doing volunteer legal work such as the programs coordinated by PBLA, working for a law firm with a firm Pro Bono commitment and getting involved in their Pro Bono work, working with a professor on a Pro Bono topic, fulfilling your writing requirement by writing about a Pro Bono topic, writing *Law Review* and other journal articles on Pro Bono issues, and seeking judicial internship or clerkship positions.

Ms. Matthews herself was formerly a law clerk to U.S. Supreme Court Justice Blackmun. She said that students interested in public interest law should pay particular attention while in school to Administrative Law, Federal Jurisdiction and Civil Procedure courses. She stressed that, unlike other legal positions, public interest attorneys are given responsibility for cases right away and must have the technical skills to handle the work.

The National Center for Youth Law focuses on issues regarding children in poverty. Ms. Matthews is involved in cases dealing with children in the foster care system, how states administer federal aid, conditions of and alternatives to juvenile institutions, and housing discrimination against families. She reported that children's mental health is an important issue right now: children with mental problems are being institutionalized because either there are not adequate services available or the children do not have access to those services. The Center does take summer interns.

The institutions which perform public interest law are quite varied. Legal Services Corporation runs local offices such as the Legal Aid Society, state support systems such as the Western Center on Law and Poverty in Los Angeles, and national support systems such as the National Center for Youth Law in San Francisco. Non-profit public interest organizations which might provide legal jobs include the bar association programs run by the San Diego Volunteer Lawyer Program, grant foundations, and programs funded by Interests on Lawyers' Trust Accounts (IOLTA). Many private firms focus on public interest areas such as employment discrimination and environmental issues. Finally, the largest employers of attorneys who deal with public interest issues are federal, state, and local governments.

Judge Coates: Homeless Advocate

By Shannon Goldman

The Pro Bono Legal Advocates sponsored a speech by the Honorable Robert C. Coates, Municipal Court Judge, on March 8. The topic concerned what law students can do to help change the communities around them. Judge Coates is a graduate of the California Western School of Law and has been an adjunct professor at USD.

Judge Coates said that he first became aware of the impact the homelessness issue was having on our communities after assuming the bench.

A central theme of Judge Coates' message was that as our institutions are becoming increasingly frayed and unworkable, individuals need to help each other. Judge Coates recommended that law students who want to "step onto the stage of history" by helping to change their communities begin by linking into existing structures such as the Pro Bono Legal Advocates, San Diego Volunteer Lawyer Program, and Legal Aid, or by assisting private attorneys with litigation and lobbying.

Judge Coates recognizes that with the increasingly high billable hours required of new associates, pro bono work may not be possible for many attorneys within the large firms. However, Judge Coates advised that bar associations and communities will still provide an avenue for helping others.

Judge Coates believes that the purpose of law is to solve problems. Courts today need to get to the heart of problems such as homelessness and stop focusing on statistics and being satisfied with having completed the procedural requirements.

Judge Coates, a person who practices what he preaches, has acted on the homelessness issue by writing a book on the subject in 1990, *A Street Is Not a Home*, available at your local Legal Research Center. He has also served with the Mayor's Task Force on the Homeless. Judge Coates recently won the Annual Warren Williams Award for work with the mentally ill. He has also been active in the San Diego community in the areas of ecology, scouting, museums, libraries, and mental health.

Pro Bono Legal Advocates also sponsored Martha Matthews, who spoke on March 31 about public interest law careers and her work at the National Center for Youth Law. Ms. Matthews is a staff attorney at the National Center for Youth Law.

The 1992-93 Pro Bono Legal Advocates Board is proud to announce next year's board members:

Chair	Kelley Murphy
Vice-Chair	Cathy Smith
Secretary/Treasurer	David Speckman
SSI Coordinator	Teresa E. Smith
Mentoring Coordinator	Frances G. Quevedo
Mediation Coordinator	Courtney Wheeler
Domestic Viol. Prevention Coord.	Nina Golden

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of Reuben and Procter in Chicago. He did litigation work in the areas of antitrust, securities, libel cases representing media defendants, and other commercial litigation. Wonnell said that he generally enjoyed the experience of litigating, but noted, "If you were a first year associate and the fourth attorney on a major trial, you were assigned the drudgery."

In 1984, Wonnell came to USD, where he has remained until the present. "I expected to go into teaching.... My interest in policy issues and the question of what the rules ought to look like can be satisfied in teaching perhaps better than in practice."

This semester Wonnell is teaching first year contracts and UCC: sales and commercial paper. He has also taught creditors' and debtors' rights, remedies, securities regulation, corporations, agency and partnership, and creditors' remedies. Wonnell sees these classes as a natural extension of his economic background.

Wonnell has observed many changes at USD Law since he began teaching. He notes an increased emphasis on scholarship among the faculty; that is, the number of articles published. The students are much stronger too, Wonnell says. Their entering credentials are much higher, and this has made a difference in the classroom.

Wonnell's teaching style parallels his interest in economics and policy issues behind the rules of law. "I definitely attempt to inject a lot of policy analysis into the course. I use a lot of economic theory.... My first year classes are more Socratic then my upper level classes; they tend to be a little more lecture oriented." He sums up his classes by calling them a combination of traditional Socratic method when analyzing cases with lecture directed toward economic theory and policy.

Internalizing the students' interest in the material, stimulating their intellectual curiosity, and causing them to continue to think about the questions they encounter in class are the values Wonnell hopes to pass on to his students.

Students, when asked to comment on their teacher and what they liked about Professor Wonnell, brought up some recurring themes. Among them was the fact that he is a very analytical and intelligent man. One student best summed it up by stating, "He has a mind like a trap." Another student said he is "very genuine - not pompous, but brilliant." These students noted that Wonnell was able to structure his classes and give them a very logical perspective from which to view the material.

Another theme that was prevalent in student comments was that Wonnell is very demanding. One student said that Wonnell "works you hard; he always covers the assignments, but he's fair." Wonnell confirmed that his first year contracts class, unlike the other contracts classes, will finish the entire book.

One final theme that the students interviewed agreed that they liked about Wonnell is his humor. Although they referred to him as "serious" and "straight laced," these same students noted that he can be "funny and he doesn't even know it." Wonnell replied to this by noting that "the case law is a litany of wrongs that people have committed against each other, and you have to keep a sense of irony and a sense of humor about it because it's grim stuff."

Wonnell is being passed the torch of Professor of the Year from Dean Kristine Strachan, who received the distinction last year. Professor Dick Huffman was the first Professor of the Year in 1991.

ELECTION from page 1

and Renae Adamson.

One possible explanation for this domination is that this year's second year class also outvoted all the other classes. Last year, as 1Ls, they nearly outvoted the second and third year classes combined.

But when we slip on the hip boots and wade through the mire of candidates, we must ask ourselves: Whom did we elect? And more importantly, why?

Brad Fields, the new SBA President, served as Day VP last year. His other recent accomplishments include: clerking for Edwards, White & Sooy this summer, *Law Review*, graduating from UCSD in 1991, and being one of only three people last fall to win the softball championships in both the co-rec (with the "Drunken Sluts") and competitive (with "Well Hung Jury") leagues. In case you wondered, he had no hand in naming either team.

Judy Carbone was the runner-up candidate for president. In an interview for this article, she remarked, "I ran to bring more issues into the campaign than are usually addressed by the SBA, and I was pleased to find such interest among students about those issues. We need to take some responsibility for our own legal education and take a more active part in decision making at USD."

The new Day VP, Denise Hickey, studied genetics at UC Davis. She wants to work in patent law and landed a job at Fitch, Even, Tabin & Flannery for the summer. Her resume of accomplishments includes sitting on the executive board of the Women's Law Caucas, driving double-decker buses at UC Davis, and being a card-carrying member of the ACLU.

Last year's evening rep, Lynn Field-Karsh, was elected Evening VP. Besides graduating from SDSU and attending USD law, she works as an administrative assistant in the biology department at UCSD. For those scoring at home, that's a hat trick as far as involving yourself with recognizable San Diego universities. One of the not-so-proud-moments of her life took place when she ran for Rodeo Queen and lost to a woman who fell off her horse during the competition. Really.

Renae Adamson won the Treasurer position. She is a graduate of the University of Missouri and hopes to practice business or corporate litigation. A frequent Moot Court participant, some consider her an oral specialist. I don't know what that means. Her most recent claim to fame, though, is being pelted by a Brad Fields line drive during a recent softball game.

Ann-Margaret Bartish, our new Secretary, went to USD undergrad. It has come to our attention that she knew Dan McNamee, also a USD graduate and the exiting secretary, during her college years. *Motions* is considering an investigation into a conspiracy to monopolize the secretary position. This summer, Ann-Margaret will be in Paris with USD's study abroad program. In her spare time she sings professionally.

SBA President's Report

Robert Chong says Good-bye to USD After Term of Office

By Robert Chong

If this were old England they would shout, "The King is dead, long live the King." A special congratulations to the newly elected council members for 1993-94. Before I give up the reins, here are some scheduled events to close out this year.

RACE JUDICATA - The First Annual Race Judicata fun run and fundraiser will be Saturdy, April 24, at 8am. A scenic 5K trail through the USD campus will be plotted out for the event, and entry for running enthusiasts and weekend joggers alike will be $10, which includes a T-shirt. BARPASSERS is the generous sponsor, and proceeds will go to LRAP. Volunteers are needed to work the race.

GRADUATION CELEBRATION - Our year-end, semi-formal celebration will be at the Princess Cruise Resort May 14 and is open to all students. The $15 price includes a sit-down dinner, deejay, and photographer. Door prizes will include various items with a "USD Law School" motif, a full PMBR bar review course, and perhaps an evening's stay at the Princess Cruise Resort Hotel.

FIRST AMENDMENT BULLETIN BOARD - Will be unveiled in the Writs in late April. SBA hopes you all will exercise your first amendment right to free speech and freely express your thoughts and feelings on the 1st A Board. Keep in mind, the right to free speech does not include fighting words or words intended to cause riots, so we ask the authors of any material to be tasteful and to sign your name to your masterpiece. While the SBA will not censor any material submitted, we preserve the right to exclude any unsigned material. Submit your writings under the SBA door for posting.

The First Amendment Bulletin Board is in response to this year's increased defacement and surreptitious slandering of groups which borders on vandalism. If you know of any, please report it. The purpose of the Bulletin Board is to provide a "marketplace" for the dissemination of ideas; if people choose to publicly voice their thoughts, let's do it in the open and not be so vicious.

A REPORT FROM THE DEAN'S STUDENT ADVISORY COUNSEL - DSAC meets monthly to informally discuss with Dean Strachan matters most pressing to students. Its primary function is for students to evaluate professors who are up for tenure. This year, we made recommendations to the Dean about Professor Walt and Professor Heriot.

We also formed ad hoc committees. The Student Advisory to Parking Services (SAPS) has so far only come up with a band-aid to the parking problem, but a real solution is not far behind. The Student Advisory to the Career Services was formed.

We at the USD School of Law are unique in that we have a direct student voice to the Dean. DSAC is comprised of the SBA President, three SBA council member of the President's choosing, and three students who the Dean feels will offer unique and diverse views.

REPORT FROM THE LAW ALUMNI BOARD OF DIRECTORS - At the March meeting we solicited candidates and votes for the annual Distinguished Alumni Award. The Board also planned a get together for Young Lawyers, graduates who have been recently admitted to the bar, in hopes of keeping their interest in the Law School alive. For San Diego July bar takers, the Law Alumni office will sponsor a little celebration after the third day of exams.

PARTING WORDS - It is hard for me to encapsulate all that has occurred in the last year. SBA was very busy this year planning events and laying the groundwork for events and policies. I am extremely pleased with the quality of people I've worked with and met this year. Being your President will be etched in my memory for years to come. Thank you all for allowing me the opportunity to have served you.

That's all.

Evening Student Survey

Gripes and Grins from the Evening Division

By Lynn Field-Karsh

What do evening law students at USD want? In February, the SBA surveyed evening students through their SBA class reps to find out. Ninety-six out of approximately 220 evening students responded to the survey. Evening students mainly want to be treated the same as day students, especially when it comes to participating in student organization activities and access to administrative offices. They would also like to be able to find a parking place in the evening when they come to school straight from work.

Most evening students are in the program because they work during the day. Many also have daytime family obligations. The majority of those who responded to the survey do not participate in extracurricular activities because their schedules do not permit time or because the events are not scheduled at convenient times for them. Many evening students suggested that student organizations schedule their events after evening classes, Friday nights, and weekends.

Evening students who do participate in extracurricular activities participate in: Moot Court, 4; Pro Bono, 5; Land Use & Planning, 3; SBA, 3; PAD, 3; PDP, 5; Intramurals, 11; Law Review, 7; Environmental Law Society, 2; Women's Law Caucus, 4; Motions, 1; La Raza, 1; Lawyer's Club, 1; Bar Review, 2; Journal of Contemporary Legal Issues, 1; St. Thomas More, 1; and Other (Volunteer, EAD, etc.), 7.

Evening students rated their priorities in this order: 1) sufficient study time; 2) parking; 3) available time with family or friends; 4) financial obligations; 5) employment opportunities after graduation; 6) access to school services (Records, Career Services, Financial Aid, etc.); 7) access to faculty; 8) access to library; 9) safety in the school environment; and 10) other (access to Sports Center, cafeteria, computer lab, etc.).

Seventy-seven evening students said that they would like to see increased or regular hours for administrative offices (Career Services, Financial Aid, Records, Student Accounts, etc.). The most common suggested office hour times were 6-7pm every day, or until 9pm at least one day a week. When asked whether or not they were aware that some administrative offices do stay open later on some evenings, 59 students were aware, while 34 students were not.

The students were also asked whether or not they support the idea of a Dean of Evening Students. Of the 81 students who answered this questions, 53 said "Yes" and 28 said "No." When asked what would they like to see as priorities of the current administration, the students responded, from highest priority: 1) draft and publish policies and procedures that relate to evening students; 2) lobby administration for evening student needs; 3) lobby faculty for evening student needs; and 4) act as a liaison between evening students and administration/faculty.

When asked whether or not they were aware that the position of Assistant Dean of Student Affairs (Carrie Wilson) existed, 50 students said they were aware and 47 said they were not. Thirty-one knew where she is located - 43 didn't (Room 206-Warren Hall). Also, when asked if they had ever contacted the Assistant Dean with a problem, 14 have and 64 have not.

Thirty-three students felt adequately represented by the SBA. The same number did not, and 11 students didn't know if they were adequately represented or not.

Following are a selection of comments made on the survey forms.

"Day students are preferred by employers."

"Make access by evening students mandatory in order for student organizations to receive money from SBA."

"Why can't some activities occur on Saturday?"

"Since grades = jobs, it is unfair for the majority of evening students who work to compete with students in the evening program who don't."

"It seems amazing that a school that began as an evening law school has totally shut out the evening students. They need to be thought of as equal to day students."

"Dean Wilson is fantastic - the most helpful person at USD!"

"I miss out on guest speakers. I cannot join any clubs. I don't get in the interview process. I am treated as if I am below average, yet I am a CPA with 8 years experience!"

SBA President-Elect's Report

By Brad Fields
SBA President Elect

As SBA President-elect, I would like to thank everybody who voted in the SBA elections. Over 450 people turned out to vote for their favorite candidates. Although that may not sound like a large turnout for a school with approximately 1100 students, it is almost double the number of votes cast last year. I extend my gratitude to my supporters and pledge my hard work to gain the trust and respect of all.

Although I want to make some changes next year, I ran for SBA President without making any substantive "campaign promises." However, I should first deal with the only "promise" that I made during the campaign: to try to open communication between the SBA and other law school students. I hope to live up to this promise by holding office hours in the Writs and open forums on topical issues such as parking. I also hope we can implement an effective calendaring system to allow students easy access to important information. We will look into using voice mail next year so students can call for up-to-date information on programs, find out about intramural games, and leave messages for SBA officers.

I will focus most of my energies next year on changing the way that SBA itself operates. I want to rewrite the SBA bylaws to make them more responsive to the needs of all students. We need to clarify some of the "loose ends" that currently exist. For example, at the beginning of the year, the bylaws were ambiguous concerning the process by which the SBA filled vacant representative positions. We need to clarify the SBA election rules to make sure that all candidates know the limits to campaigning. Additionally, I would like to look into limiting the ABA rep position to a 2L or 3L evening student (i.e., students having another year of school). This position would be a stepping stone for regional or national ABA office. This cannot occur if the ABA rep graduates after serving in the office.

Finally, I would like to further clarify the roles of the SBA officers in our bylaws, which currently are short on specifics for the officers. By adding more details to the jobs of the Executive Board, we will help future SBA presidents organize the year's activities.

Much SBA work involves working on law school and campus-wide committees. Currently, I sit on the university parking committee and the Dean's Student Advisory Committee. I am beginning to go with President Chong to meetings for committees on which I will sit next year. For example, the SBA President is the only student allowed in faculty meetings. As Day Vice President, I have attended a few meetings when Robert could not attend, and I will attend the upcoming faculty meetings for the duration of the school year. Also, I am beginning to sit in on the campus-wide Student Affairs Committee, a group of campus student government presidents, some administrators, and some trustees. I will be attending more meetings and appointing students to sit on other committees.

We are now working on setting up orientation and the fall mentor program. Also, we are tentatively forming committees for the other SBA events, such as the fall picnic, the Halloween party, and Law Revue (the talent show). I am making appointments to various law school and university committees. If you are interested in working with the SBA on any events or serving on any committees, please drop a note in the SBA suggestion box in the Writs or stop by the SBA office.

There are two people that I feel I must mention at this time. First, I want to thank SBA President Robert Chong. Robert, as your VP I learned a lot from you this year. I will build on the good work that you have done for the law school, and I hope that next year will be as successful as this year. Second, I would like to thank my opponent in the election, Judy Carbone, for a fair and honest campaign. Judy, before the election, I did not know you very well. However, my admiration for you grew as the process wore on. I hope to work with you and your supporters next year to make the law school the best it can be.

Speakers' Forum:

'McLaughlin Group' Panelist Speaks

Barnes Exposes Hollow Promises of the Clinton Administration

By Emil J. Wohl
Motions Staff writer

Award winning journalist Fred Barnes delivered a speech at USD March 24 in which he evaluated the new Clinton administration.

Barnes is a high profile political commentator best known as a regular panelist on the "McLaughlin Group," the country's highest rated public affairs program. He also writes the "White House Watch" column for "The New Republic" magazine was formerly a Supreme Court correspondent.

Sponsored by The Federalist Society with the SBA and Young America Foundation, Barnes' speech concentrated on Clinton's inability to measure up to much of his campaign rhetoric.

Barnes focused on the litany of unfulfilled promises heard during the campaign. "Clinton claimed he was a 'different' kind of Democrat that represented a third way which was not liberal and not conservative. Well, was that the real Bill Clinton? After seeing him at work for 63 days, it is clear that Clinton just talks like a New Democrat. He talks centrist and moves to the left, and it's very good politics; he's someone who responds to pressure, and in Washington the pressure comes from the left. Bill Clinton responds to that, but he believes in one thing: government. This is the same government that cannot get a letter to us in under a week."

Barnes specifically discussed areas in which he feels Clinton has already betrayed the American people. Along with forgotten promises to take a tough stance on welfare reform, he targeted Clinton's economic policies: "The one issue which he said distinguished him as a New Democrat was the middle-class tax cut, which he was in favor of. He's now abandoned that, yet he is still retaining the tax increase on the wealthy, which he adopted for one reason during the campaign: to pay for the middle-class tax cut."

Barnes lashed out at the liberal media: "The press coverage of the economy changed dramatically on Nov. 3. In the media coverage of the economy in the three months leading up to the election, 96% of the stories on the present state of the economy on the three networks were negative about the economy. Then something happened: Bill Clinton got elected, and the stories that were 96% negative in Nov. suddenly became 58% positive, and 66% positive in Dec. This was on the same economy, growing at the same rate, with the same inflation rate, and a slight drop in the unemployment rate."

Barnes criticized Clinton's approach to small businesses, which he predicts will suffer: "Clinton's plan includes costs for new hiring such as the family leave provision, the higher minimum wage, the job training tax health care costs, and more environmental regulation. This raises the cost to hire and reduces the incentive to hire, which is not a good thing to do when such businesses account for so much growth."

While much of Barnes' speech criticized the new administration, he spent little time proposing better alternatives. He thinks that the Republicans should adopt no new spending, no tax increases, and "accept some real spending cuts."

Gays in the Military:

Should the Ban Be Lifted?

By Jamison A. Ross
Motions Staff writer

The question of whether gay or lesbian individuals should be permitted to engage in military service while openly espousing their sexual preference was the focus of the SBA Speaker's Bureau discussion on Tuesday, March 30. Professor Fred Zacharias moderated the discussion, which was held in the faculty lounge and followed by a wine and cheese reception.

Fred Bumer, a local attorney and a lieutenant in the Naval Reserve with service in World War II and the Korean conflict, represented the homosexual community's position that the ban should be lifted. Colonel Ron Ray was scheduled to attend to represent the official military position that the ban should remain; however, he was unable to fly in from Kentucky due to illness. Nevertheless, a lively discussion ensued with Prof. Zacharias assuming the military's position by default.

Prof. Zacharias began the discussion by presenting two questions. One, whether or not the ban is a good idea, and two, assuming that we keep the ban in place, is it constitutional?

Mr. Bumer pointed out that the rationales claimed by the military in support of the ban were the same used in the 1950s and 1960s to avoid racial integration of the services: namely, detriment to morale, leading to inefficiency and poor teamwork; and harm to the image of the armed services, resulting in recruiting and reenlistment decreases.

Prof. Zacharias suggested that the real test should not be the accuracy of the military's rationale for the ban, but, rather, whether the need for efficiency, morale, and a strong fighting team trumps what is fair. "Assuming that homosexuals have a negative effect, is it fair for the Supreme Court to say that it doesn't matter because it isn't fair?"

He further explained that it is clear that "fairness" depends on which side of the issue you stand. The military believes that it is fair to keep those with a lifestyle deemed "incompatible with military service" from openly acknowledging their sexual orientation. For the homosexual community, the definition of fairness would be equal access to military service regardless of sexual orientation.

Mr. Bumer suggested that the homophobia prevalent among the top military brass is speculative because homosexual individuals have openly served and are currently serving in the military, and their co-workers "don't care." Professor Zacharias pointed out that simply saying that the Pentagon's position is speculative won't suffice because the hearings currently before Congress will establish a record in support of each position. It is from this record that the courts will make their decisions.

Prof. Zacharias pointed out that the military made the determination that women couldn't serve in actual combat roles, and the decision was upheld by the courts based on the record.

Mr. Bumer pointed out that the military has selectively applied its ban based on personnel demands and recruitment goals. When the military needs people, they let gays in; when they don't, gays are shut out. He further noted that saying that the homosexual lifestyle is incompatible with military service is demonstrably false because many gay and lesbian individuals have served with honor, have been distinguished in combat, and have been honorably retired or discharged.

Mr. Bumer asserted that the government is trying to translate morally insignificant differences into a rationale for different treatment, or a form of second class citizenship. A student asked if such strict scrutiny of the military will allow the courts to more strictly scrutinize other military decisions, thereby lessening the effectiveness of the Pentagon. Mr. Bumer responded, "You don't abandon your constitutional rights when you go into the military. [The ban] is just not fair." He suggested that whenever substantial personal rights are at stake, the courts should apply strict scrutiny, regardless of the governmental agency affecting those rights.

The discussion concluded with Prof. Zacharias noting that there is a "high psychological price you pay for not being yourself." It will be up to Congress and the courts to determine whether or not gays and lesbians should have to pay this price if they serve in the nation's armed forces.

SHEILA JAMES KEUHL: *Chatting with students at a reception following her discussion of feminist theory. Ms. Keuhl was an actress on the "Dobie Gillis Show" prior to her legal career.*

Keuhl Illuminates Women's History Week

By Larissa Kehoe
Motions Staff writer

To celebrate Women's History Week, the Women's Law Caucus invited Sheila James Keuhl, Director of the California Women's Law Center, to speak on equality.

Keuhl noted that, in order to talk about equality in American society, one also had to talk about "difference."

To illustrate gender as a difference, the first question asked about a new baby is, "What is it?" "Why is that the first question anyone asks of a human life?" queried Keuhl. Her opinion, which she acknowledged to be a radical view, is that gender helps to create two classes in society.

Knowing the baby's gender, she explained, "will tell us how the baby is to be thought of, how it is to be handled, touched," and the type of toys it may play with. A question of status is involved, said Keuhl: Pink "demeans and diminishes" a male baby's status, while blue "elevates" the status of a girl. The toys children are allowed to play with are also impositions of the way in which society views males and females, "boys for cannon fodder, girls to make more."

The more insidious aspect of forced difference is that it creates a cultural mythology which "creates an enforced caste system in which we don't even see we have a caste system." Keuhl likened women waiting for men to call for a date to not speaking to a person of a higher caste first.

Caste systems and communication were the main problems Keuhl found at a law firm, which was having a problem retaining women attorneys. Besides a lack of communication, Keuhl found a type of caste system in place which affected the men as well. Tall men, for example, got better assignments than short men, because tall men better fit the firm's "image."

"We look to the law to solve a lot of the problems...to even up the odds," but there is still a difficulty in accomplishing this due to the problem of defining what "equality" means. She then discussed "the four avatars of equality theory" in the feminist movement, "equality doctrine," "equality theory," "feminist theory," and "feminist doctrine."

Equality doctrine was an early feminist attempt to prove that women were as good as men. Women wore shoulder pads and ties to look like men in the 1940s and 1970s. Under this theory reproductive choice was difficult to explain because a normal worker was equated with a non-pregnant worker. To be more like men, pregnant women said, "You won't even notice. I'll just leave for five minutes, go have the baby and be right back."

In contrast, Keuhl noted that equality theory stresses the differences between women and men. The truths that the law embodies were articulated by men, and these truths are things which make more sense when applied to men. The concern is not so much equal treatment as equal result. For example, Keuhl pointed out that in one case, when a law that required all employers to give women four months unpaid pregnancy leave was challenged because men did not get this "privilege," equality theorists filed a brief in favor of the law, while followers of equality doctrine filed a brief on the other side.

Feminist theory, continued Keuhl, is concerned with how legal doctrine works with other doctrines to keep women oppressed. Under this theory, one could rephrase rape laws to read, "Women are always available for sex unless they say they're not, and fight very forcefully against it." In contrast, sexual harassment by whistling or making comments to women on the street is not considered actionable.

Feminist doctrine, the most recent aspect of equality theory, is "post-modernist," according to Keuhl; it acknowledges, but stresses the need to contextualize differences. The doctrine seeks to humanize the law by making the law reflect real human interaction.

Keuhl explained that custody law should take into account what is best for the child. In California, when the husband batters the wife but never the children, the courts will grant joint custody because the children were not harmed only by seeing their father batter their mother. That the law does not shift the burden to the man to show that he should share custody of the children, said Keuhl, shows that the father's point of view is entrenched in the California law.

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Schedule of Classes

San Diego

• Live Lectures

Monday, March 29, 1993
6:30 pm to 10:30 pm
CONTRACTS II-U.C.C
(Assignments/Delegations, Third Party Beneficiaries, Conditions, Breach, Remedies)

Tuesday, March 30, 1993
6:30 pm to 10:30 pm
TORTS II
(Negligence Defenses, Strict Liability, Vicarious Liability, Products Liability, Nuisance, Misrepresentation, Business Torts, Defamation, Invasion of Privacy)

Monday, April 5, 1993 • 6:30 pm to 10:30 pm
CIVIL PROCEDURE II
(Class Actions, Discovery, Summary Judgement, Attacks on the Verdict, Appeal, Collateral Estoppel, Res Judicata)
**Students who pay for Civil Procedure II Review can view video presentation of Civil Procedure I free of charge on Tuesday, April 6, 1993 from 7:00 pm to 11:00 pm Room 2F*

Tuesday, April 6, 1993
6:30 pm to 10:30 pm
CONSTITUTIONAL LAW I
(Justiciability, Commerce Clause, Federal/State Conflicts, Privileges & Immunities, Separation of Powers, Due Process, State Action)

Wednesday, April 7, 1993
6:30 pm to 10:30 pm
REAL PROPERTY II
(Sale of Land, Recording Act, Covenants, Equitable Servitudes, Zoning, Landlord/Tenant Relations)

The Pre-Registration Price for Each Live Seminar is: $50.00
Registration at Door if Space Available: $55.00
All **live** courses will be held at California Western School of Law,
350 Cedar Ave., San Diego – Auditorium
Real Property II will be held in Room 2B

• Video Lectures

Monday, March 29, 1993
7:00 pm to 11:00 pm
CONTRACTS I-U.C.C
(Formation, Defenses, Third Party Beneficiaries, Breach, Remedies)

Monday, April 5, 1993
7:00 pm to 11:00 pm
TORTS I
(Intentional Torts, Defenses, Negligence-Causation Emphasis, Defenses)

Tuesday, April 6, 1993
7:00 pm to 11:00 pm
CIVIL PROCEDURE I
(Jurisdiction, Venue, Choice of Law, Pleadings, Joinder, Class Actions)

Wednesday, April 7, 1993
7:00 pm to 11:00 pm
REAL PROPERTY I
(Concurrent Interests, Future Interests, Adverse Possession, Class Gifts, Landlord/Tenant)

The Registration Price for Each Video Seminar is: $25.00 (*Half Price*)
All **video** courses will be held at California Western School of Law, 350 Cedar Ave., San Diego – Room 2F

• Live Lectures *Hanalei Hotel*

Friday, April 23, 1993
6:30 pm to 10:30 pm
REAL PROPERTY II
(Sale of Land, Recording Act, Easements, Profits & Licenses, Covenants, Equitable Servitude, Zoning)

Saturday, April 24, 1993
1:00 pm to 5:00 pm
TORTS II
(Negligence Defenses, Strict Liability, Vicarious Liability, Products Liability, Nuisance, Misrepresentation, Business Torts, Defamation, Invasion of Privacy)

Sunday, April 25, 1993
1:00 pm to 5:00 pm
CONTRACTS II-U.C.C.
(Assignments/Delegations, Third Party Beneficiaries, Conditions, Breach, Remedies)

The Pre-Registration Price for Each Live Seminar is: $50.00
Registration at Door if Space Available: $55.00
All courses will be given live at the Hanalei Hotel,
2270 Hotel Circle North, San Diego – Tropic Surf Room

Orange County

Monday, April 26, 1993
6:30 pm to 10:30 pm
CONSTITUTIONAL LAW II
(Procedure, State Action, Thirteenth/Fifteenth Amendment, First Amendment Rights: Speech, Association, Press, Religion)

Tuesday, April 27, 1993
6:30 pm to 10:30 pm
CRIMINAL LAW

Wednesday, April 28, 1993
6:30 pm to 10:30 pm
CONTRACTS II-U.C.C.
(Assignments/Delegations, Third Party Beneficiaries, Conditions, Breach, Remedies)

Friday, April 30, 1993
6:30 pm to 10:30 pm
TORTS II
(Negligence Defenses, Strict Liability, Vicarious Liability, Products Liability, Nuisance, Misrepresentation, Business Torts, Defamation, Invasion of Privacy)

Friday, April 30, 1993
6:30 pm to 10:30 pm
CIVIL PROCEDURE I
(Jurisdiction, Venue, Choice of Law, Pleadings, Joinder, Class Actions)
Video: Room 215

Saturday, May 1, 1993
6:00 pm to 10:00 pm
REAL PROPERTY II
(Sale of Land, Recording Act, Easements, Profits & Licenses, Covenants, Equitable Servitudes, Zoning)

Saturday, May 1, 1993
6:00 pm to 10:00 pm
REAL PROPERTY I
(Concurrent Interests, Future Interests, Adverse Possession, Class Gifts, Landlord/Tenant)
Video: Room 215

Sunday, May 2, 1993
1:00 pm to 5:00 pm
CONTRACTS I-U.C.C.
(Formation, Defenses, Third Party Beneficiaries, Breach, Remedies)

Sunday, May 2, 1993
6:30 pm to 10:30 pm
TORTS I
(Intentional Torts, Defenses, Negligence-Causation Emphasis, Defenses)

Tuesday, May 4, 1993
6:30 pm to 10:30 pm
CIVIL PROCEDURE II
(Class Actions, Discovery, Summary Judgement, Attacks on the Verdict, Appeal, Collateral Estoppel, Res Judicata)

Wednesday, May 5, 1993
6:30 pm to 10:30 pm
EVIDENCE II
(Hearsay, Privileges)

Thursday, May 6, 1993
6:30 pm to 10:30 pm
REMEDIES II
(Damages, Rescission, Restitution, Reformation, Specific Performance)

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Mr. Fleming's experience includes the Lecturing of Pre-Law School Prep Seminars and First, Second and Third Year Law School Final Reviews. He is the Organizer and Lecturer of the Baby Bar Review Seminar and the Founder and Lecturer of the Legal Examination Writing Workshop. Both are seminars involving intensive exam writing techniques designed to train the law student to write the superior answer. He is the Founder and Lecturer of Long/Short Term Bar Review. In addition, Professor Fleming is the Publisher of the Performance Examination Writing Manual, the Author of the First Year Essay Examination Writing Workbook and the Second Year Essay Examination Writing Book. These are available in California Legal Bookstores.

Mr. Fleming has taught as an Assistant Professor of the adjunct faculty at Western State University in Fullerton and is currently a Professor at the University of West Los Angeles School of Law where he has taught for the past nine years. He maintains a private practice in Orange County, California.

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Registration at the Door If Space Permits

Ask the Librarian:

The LRC: Hold the Card Catalog

By Tom Turner
Motions Staff writer

The LRC is not just card catalogs and stacks anymore. With the computerization of every thing comes the modern library. So modern, in fact, that there are surely some things that even the most astute observers did not know.

One of the newer services (not completely new, but at least relatively unknown) is the CALI program. Available in the computer lab in the LRC, CALI offers a modern twist on an old habit; studying. CALI, which stands for Computer Assisted Legal Instruction, is a self-guided study tool. The user selects a topic and then works through a tutorial on that subject. With many classroom topics in the database, such as evidence, contracts and secured transactions, it can be useful in preparing for finals and the bar.

Another computerized service going more or less unnoticed is the Interactive Video program. Located in Room 120, between the Lexis and Westlaw rooms, this service combines CALI with video technology. The viewer watches a trial on a TV screen, presses a key to raise objections, selects among various grounds for the objection then receives the judge's ruling and reasoning. There are currently two programs available. Discs can be checked out at the circulation desk.

Other technological tools available include the LegalTrac system on CD-ROM. This is an index of legal periodical articles through which the researcher can search by author, title or subject. The LRC hopes to eventually acquire CD-ROM indices to Congressional and United Nations materials.

With technology come special problems, though. One problem in particular is space. With the demand for computers increasing and the library as an edifice remaining static, students and administrators often find the computer lab and the Lexis and Westlaw rooms cramped. According to Associate Director Ruth Levor, the LRC is constantly looking for creative ways to get around this problem. For example, the LRC recently increased the operating hours of the computer lab and often uses the former typewriter, now Laptop room, for extra Lexis and Westlaw terminals during 1L training.

Laptops themselves have created a minor ripple. Some students find them to be noisy, not suited for use in quiet areas. In a sudden change of policy, the LRC has recently announced that laptops are now confined to the first floor of the LRC only. This restriction is a considerable step beyond the previous policy of requiring complaining library patrons to negotiate reasonable compromises with anyone whose study is disturbed by their use.

Modernization does not spell the end to lingering troubles at the LRC though. Ants continue to uphold their position on that list. As long as people smuggle in food and leave the remains lingering on tables or tucked in between carrels, there will be ants. In other words, only you can prevent ant infestations.

Theft is another problem that apparently did not die in the technological revolution. Incidents of stolen purses and wallets remain a constant. Ms. Levor said that campus security conducts periodic patrols through the LRC hoping to deter the thieves and remind students to protect their things. The most effective prevention is to simply not leave valuables unattended.

If any student has a problem or solution to these or other issues of library interest, the Suggestion Box awaits in the main lobby. The LRC staff encourages creative and constructive suggestions. And, of course, going with the theme, there is also an electronic suggestion box on the Sally system that library administrators oversee.

RUTH LEVOR: *LRC Associate Director poses with SALLY.*

The Bill of Rights and American Legal History

By Franklin A. Weston

The Legal Research Center has acquired a 20 volume set of materials that reproduce over 300 key articles which explore the 200-year history of the rights of American citizens. Paul L. Murphy, the editor of the set, has written on legal history, specifically U.S. constitutional history, and civil liberties and civil rights.

The set includes a volume on the historic background of the Bill of Rights; two volumes on pre-1960 developments in the Bill of Rights area; four volumes covering free speech issues; a volume exploring rights of assembly, petition, arms and just compensation; three volumes on free press issues; two volumes on religious freedom: separation and free exercise; two volumes on the right to privacy and the ninth amendment; four volumes exploring criminal procedure; and a volume on the Bill of Rights and the states.

Murphy has selected key law review articles from each of the areas noted and reprinted them for easy access by researchers. Since the articles date from the 1920s to the present, the collection makes sense for those non-law libraries without extensive holding in legal periodicals. The collection also makes sense for law libraries because the editor, by pulling together the relevant articles on these subjects, cuts the researcher's time immeasurably.

For the legal history researcher in the civil rights covered by the first ten amendments to the Constitution, this set is convenient to use and a pleasure to peruse.

The author is Senior Reference Librarian at USD's legal research center.

New Book Arrivals at the LRC

By Franklin A. Weston

Bartlett, John. Bartlett's Familiar Quotations, 16th ed. First published in 1855, this update has over 20,000 quotations, representing 2,550 authors, 340 of whom are new to Bartlett's, such as Russell Baker, Leonard Bernstein, Mel Brooks, John Lennon, Dr. Seuss, Nelson Mandela, and the Talmud.

Bernstein, Richard B. *Amending America; If We Love the Constitution So Much, Why Do We Keep Trying to Change It*? Examines the U.S. Constitution and efforts to amend it.

Burford, E. J. *On Bridles & Burnings; The Punishment of Women.* Describes how and why over a thousand years, by both law and custom, British women were pilloried, executed, transported, and made to undergo a host of savage humiliations contrived by masculine ingenuity.

Claude, Richard Pierre. *Human Rights in the World Community; Issues and Action, 2nd ed.* Contains articles and introductory commentary on the theory and practice of human rights and the remedies of wrongs.

DuBoff, Leonard D. *The Law (in Plain English) for Health Care Professionals; Incorporating, Advertising, Accounting, Taxes, Estate Planning, Pensions, Malpractice, Collections, Employer/Employee Rights, and Much More.* Clear advice for doctors, dentists, and other health care professionals on how to avoid and overcome legal pitfalls.

Flemming, Roy B. *The Craft of Justice; Politics and Work in Criminal Court Communities.* More than 300 judges, prosecutors, and defense attorneys candidly and often with disarming frankness discuss the fascinating dynamics of the American justice system.

Gardner, Richard A. *Sex Abuse Hysteria; Salem Witch Trials Revisited.* Focuses on polymorphous perversity of the child, sex abuse prevention programs, sexual stimuli in the public media, child sex abuse investigators and "validators," and shows the uncanny similarity between the Salem Witch Trials and the present child sex abuse hysteria.

Gaylin, Willard. Pretrial Justice; a Study of Bias in Sentencing. Explores a major social injustice: the broad and arbitrary disparity in the sentences given by judges to convicted criminals in America.

Hastie, Reid, ed. *Inside the Juror; the Psychology of Juror Decision Making.* Covers the social psychology, behavioral decision theory, cognitive psychology, and behavioral modeling of juror decision making.

Howard, A. E. Dick, ed. *The United States Constitution; Roots, Rights, and Responsibilities.* Essays on the Constitution's Old and New World origins, the rights it protects, and the behavior of citizens whose lives it rules.

Kane, Peter K. *Murder, Courts, and the Press; Issues in Free Press/Fair Trial.* Shows what happened in seven famous court cases when first amendment rights conflicted with sixth amendment rights.

Ladany, Laszlo. *Law and Legality in China; the Testament of a China Watcher.* Reveals the depth of his knowledge of the Chinese people, and of Chinese and comparative legal history.

Miller, Patricia G. *The Worst of Times; Illegal Abortion -Survivors, Practitioners, Coroners, Cops, and Children of Women Who Died Talk about Its Horrors.* Takes the approach that the issue is not whether we will have abortions but what kind of abortions we will have?

Peterson, M. J. *Managing the Frozen South; the Creation and Evolution of the Antarctic Treaty System.* Examines the issues and the kind of treaty system that deals with political and environmental challenges in governing the Arctic.

Schoeman, Ferdinand David. *Privacy and Social Freedom.* Attacks the assumption found in much moral philosophy that social control, as such, is an intellectually and morally destructive force.

Schubert, Glendon, ed. *Judicial Decision Making.* Attempts to determine scientifically - in an atmosphere free from political and partisan muckraking - exactly what attitudes influence judicial decision making and what reasoning controls judicial behavior.

Simon, Paul. *Advice & Consent; Clarence Thomas, Robert Bork and the Intriguing History of the Supreme Court's Nomination Battles.* With a forward by Laurence Tribe. Emphasizes the Bork and Thomas hearings and reveals the hidden politics that go on behind closed doors.

Sinopoli, Richard C. *The Foundations of American Citizenship; Liberalism, the Constitution & Civic Virtue.* Study of the debates over the ratification of the 1787 Constitution dealing with the founders' conceptions of citizenship and civic virtue.

Thomasma, David C. *Euthanasia: Toward an Ethical Social Policy.* Studies the kinds of euthanasia currently practiced, and analyzes the concepts of justified and unjustified euthanasia both voluntary and involuntary, and active and passive.

White, D. Leonard. *The Jeffersonians; a Study in Administrative History 1801-1829.* Tells how Jefferson, disliking Hamilton's system, found himself unable to discard it; how he had to ask for unprecedented powers to bring peace; and continues with comprehensive coverage to this important era of our history.

The author is Senior Reference Librarian at the USD Legal Research Center.

Box Score:

Harry A. Blackmun

Pre-Court History:

- Born November 12, 1908, Nashville, Illinois.
- At age 5, he became friends with a Sunday School classmate named Warren Burger, the future Chief Justice.
- At the age of 16, Blackmun was diverted from attending the University of Minnesota by a scholarship from the Harvard Club of Minnesota.
- Graduated Harvard Class of '29 with an A.B. in Math, Summa Cum Laude, elected to Phi Beta Kappa upon graduation.
- Blackmun was torn between Medicine and Law, but opted for the latter, entering Harvard Law School in the fall of 1929, one year behind William Brennan.
- Blackmun received his L.L.B. in 1932 and accepted an offer to clerk for Judge John B. Sanborn in the 8th Circuit Ct. of Appeals.
- After 2 years of clerking, Blackmun joined the Minneapolis firm of Dorsey, Coleman, Barker, Scott & Barber. He became a junior partner in 1939 and a general partner in 1943. During this time he continued his friendship with Warren Burger and stood as best man in Burger's wedding in 1933.
- Blackmun practiced in tax, litigation, wills, trusts, estate planning, and banking law. He also taught at St. Paul College of Law and the University of Minnesota School of Law.
- On June 21, 1941, Blackmun married Dorothy Clark, and they had three daughters: Nancy, Sally, and Susan.

Court History:

- In 1950, Blackmun accepted an offer from the Mayo Clinic to become its resident counsel. He held that position until 1959, when president Eisenhower nominated Blackmun as an associate justice on the 8th Circuit Court of Appeals, replacing his former boss, retiring Judge Sanborn.
- Blackmun participated in some 769 decisions of the 8th Cir. during his decade there. He wrote 210 of the majority opinions.
- In 1969, Justice Fortas resigned amid controversy from the Supreme Court. President Nixon turned to Harry Blackmun after the Senate refused consent to his previous two nominations. Given the controversy over Fortas and the previous two nominees, the most extensive background check in previous confirmation history was performed on Blackmun. On May 9, 1970, almost a year after Fortas resigned, the Senate Judiciary Committee voted 17 to 0 to recommend that the Senate consent to the nomination.
- On May 12, 1970, at the conclusion of the debate, the Senate voted 94 to 0 for confirmation.
- At 84, Justice Blackmun is the oldest current Supreme Court justice and the longest serving.

Compiled by William K. Browning.

NEW ADJUNCT PROFESSOR?: *Professor Cynthia Lee and Dean Strachan welcome guest lecturer Justice Blackmun to Lee's Criminal Procedure II class.*

Supreme Court Perspective:

Blackmun's Jurisprudence

By William K. Browning

Of the three branches of government our forefathers created, only one has fostered the trust and respect worthy of the ideals for which it was created. Our generation owes special gratitude to the United States Supreme Court for its untiring efforts to strike a balance among economic and legal realities, individual rights, and "the greater good." I was especially pleased to hear that Justice Blackmun was coming to speak at our campus. To me, his is the voice of reassurance that the Court cares about what occurs in the individual lives of the people of this country.

The writings of Justice Blackmun give me a sense of humanity in the law that I do not often see as a law student. More often we study a body of law that looks to the exact wording of a statute to find meaning or uses a grocery list of factors to determine an outcome. Blackmun's opinions remind us that laws govern people not just as abstractions, but as individuals who suffer, hope, and dream.

In 1977, Blackmun wrote a dissenting opinion in *Beal v. Doe*, in which the majority held that states could limit abortion funding to those certified as medically necessary. He said of the majority's decision: "For the individual woman concerned, indigent and financially helpless, as the Court's opinion in the three cases concede her to be, the result is punitive and tragic.... There is another world out there, the existence of which the Court, I suspect, either chooses to ignore or fears to recognize. And so the cancer of poverty will continue to grow. This is a sad day for those who regard the Constitution as a force that would serve justice evenhandedly and, in so doing, would better the lot of the poorest among us." *Beal*, 432 U.S. 438, 462-63 (1977).

More recently in *Webster v. Reproductive Services*, Blackmun wrote of the majority holding which chipped away at the *Roe* decision: "The Plurality...casts into darkness the hopes and visions of every woman in the country who had come to believe the Constitution guaranteed her the right to exercise some control over her unique ability to bear children.... [O]f the inevitable and brutal consequences of what it is doing, the tough-approach plurality utters not a word. The silence is callous." *Webster*, 109 S. Ct. 3040, 3077-78 (1989).

The bitterness of his *Webster* dissent was accented by the last passages: "[T]he plurality invites charges of cowardice and illegitimacy to our door. I cannot say that these would be undeserved.... For today, at least, the law of abortion remains undisturbed.... But the signs are evident and very ominous, and a chill wind blows." *Id.* at 3079.

This is not to say that our Supreme Court justices should readily subordinate precedent in the name of compassion. My reading of Blackmun's opinions and extra-judicial writings simply suggests that judges should be free to interpret ambiguity in a manner that serves justice.

By way of example, while Blackmun abhors the death penalty, he dissented to the majority holding the death penalty unconstitutional in *Furman v. Georgia*: "I yield to no one in the depth of my distaste, antipathy, and indeed, abhorrence of the death penalty, with all its aspects of physical distress and fear and of moral judgment exercised by finite minds. For me it violates childhood's training and experiences, and it is not compatible with the philosophical convictions I have been able to develop.... Were I a legislator, I would vote against the death penalty." Despite his strong views about the death penalty, Blackmun continued: "We should not allow our personal preferences as to the wisdom of legislative and congressional action, or our distaste for such action, to guide our judicial decision in cases such as these." *Furman*, 408 U.S. 338, 405-06, 411 (1972).

There was no ambiguity in the legislative pronouncements and findings regarding the death penalty; thus, Blackmun apparently felt that he was constrained from holding otherwise. However, when there is room for interpretation and "intuitive justice" can be done, Blackmun appears to have little trouble reaching his desired result. In *Deshaney v. Winnebago County*, he criticized the majority for denying a section 1983 civil rights remedy to a young boy who was savagely beaten by his father after the authorities refused to remove the boy from the home.

Blackmun decried the use of formalistic reasoning in *Deshaney*: "The Court today retreats into a sterile formalism which prevents it from recognizing either the facts of the case before it or the legal norms that should apply.... Such formalistic reasoning has no place in the interpretation of the broad and stirring Clauses of the Fourteenth Amendment. Indeed, I submit that these Clauses were designed, at least in part, to undo the formalistic legal reasoning that affected antebellum jurisprudence. The Court today claims that its decision, however harsh, is compelled by existing legal doctrine. I would adopt a 'sympathetic' reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging." *Deshaney*, 489 U.S. 189, 213 (1989).

Being a bit of a cynic, I question the consideration of such factors as compassion in the far-reaching decisions of our Supreme Court. However, if not considered there, where will it be? Besides, I have no fears that Blackmun will allow his emotions to run away to the detriment of the country. His comments during his confirmation hearings acknowledged that the personal aspects always affect one's judgment: "I think all of us must recognize, however, that we are what we are because of background and upbringing, and to the extent one has developed his personal philosophy, that enters into it." 8 Mersky and Jacobsen, *The Supreme Court of the United States* 42.

This notion is certainly not new to the judiciary. As Justice Frank wrote in 1949: "We could not, if we would, get rid of emotions in the administration of justice. The best we can hope for is that the emotions of a trial judge will be sensitive, nicely balanced, subject to his own scrutiny.... [T]his personal element should not be tolerated as something unavoidable but should be gladly welcomed." Frank, *Courts on Trial* 412 (1949). Indeed, the "warmer tints of imagination and sympathy are needed to temper the cold light of reason if human justice is to be done." Otherwise, justice will be but a mechanical process unsuited to govern the incalculable complexities of human relations. Adapted from Lord MacMillan, *Law and Other Things* at 217-18 (1939).

And what of when such emotional considerations lead to errors in judgment or when bad precedent is set? In a recent speech, Blackmun said of the capital punishment, right to counsel, homosexuality, and abortion cases: "We must do the best we can with these close and emotional issues.... We worry unduly about the consequences of our errors.... What was proper in decision making [will] endure and what [is] bad will be rejected and cast off in the laboratory of the years." Blackmun, *Movement and Countermovement: Remarks of Harry A. Blackmun*, Dwight D. Opperman Lecture Series, 38 Drake L.R. 747, 757 (1988).

"We progress, we hope, in legal and even constitutional interpretation. As in medicine, with which I am somewhat familiar, so in law, although more slowly, there is constant movement. We should be aware of this, anticipate it, and not resent it. We should not wish the situation to be otherwise.... My judgment may be good but it also may be very bad. Certainly yours [addressing other judges] is as reliable as mine." Blackmun, *Allowance of In Forma Pauperis Appeals in § 2255 and Habeas Corpus Cases*, 43 F.D.R. 343, 359 (1967).

"What is required of us is moral ambition. Until our composite sketch becomes a true portrait of humanity we must live with our uncertainty; we will grope, we will struggle, and our compassion may be our only guide and comfort." *Deshaney*, 489 U.S. at 213, quoting Stone, *Law, Psychiatry, and Morality* 262 (1984). It is this humility, compassion, and awareness of the human condition that makes Justice Blackmun an extraordinary jurist for our times.

The author is a third year USD law student. He adapted this article for Motions *from a paper for Professor Horton's adjudication class.*

Blackmun Entertains Students at Lunch

By Geoffrey Morrison

Justice Blackmun joined Professor Cynthia Lee's Crim Pro II class and members of the SBA executive committee for lunch in the faculty lounge. Lee's students were invited to the lecture because the class is small and meets near noon.

Blackmun, on campus to deliver the annual Nathanson Lecture later that afternoon, spoke informally with Lee's students on a variety of subjects. The oldest member of the Court at 84, he fielded a wide range of questions from the students. He demonstrated a sort of down-home style in his answers, which were punctuated with anecdotes and personal recollections.

As a speaker, Blackmun was friendly and engaging, and students noticed an unexpected candor in his responses. This notwithstanding, Blackmun did appear perturbed when asked a question about his opinion in *Roe v. Wade*. He spoke freely on such issues as the Court's procedure with respect to the discussion of cases already heard, the impact of oral argument on judicial decision making, and the future of the Court.

Blackmun told the students how the justices gather in conference to discuss the arguments which they have heard. The discussion starts with the Chief Justice giving his opinion of the case, and stating where he stands on the issue. When the Chief Justice is finished speaking, the floor is ceded to the most senior associate justice. The floor then passes to the remaining associate justices in descending order of seniority.

With respect to the impact of oral argument on judicial decision making, Blackmun spoke only briefly. While noting that briefs to the Court play a paramount role in garnering judicial support, Blackmun also cited a number of instances in which he and other justices were swayed by oral argument alone.

Turning to the future of the Court, Blackmun made vague reference to his own approaching retirement. He did not, however, give any indication as to when that would occur. Blackmun also speculated that, if President Clinton loses the next election, Chief Justice Rehnquist also might retire. Rehnquist is plagued by back problems, which are exacerbated by his necessary attendance at oral argument, and is grieving over the recent death of his wife. Blackmun also spent several minutes discussing the announced retirement of Justice White. Without suggesting who might replace White, he did suggest that it should be a woman.

Blackmun answered several questions by launching into personal anecdotes about himself and fellow justices. Blackmun described the late Justice Douglas as one who seldom paid attention to oral argument, preferring instead to write his opinions while on the bench. Blackmun also surprised students by alluding to animosity between Justices Scalia and O'Connor. Blackmun noted that O'Connor appears to resent both Scalia's pedantry and his Socratic questioning of advocates before the Court.

Blackmun's wife, whom he affectionately calls Dottie, was also in attendance. Prior to the start of the luncheon, Mrs. Blackmun made her way around the room, introducing herself to the students in attendance. Both Justice and Mrs. Blackmun appeared to enjoy the gracious hospitality they were shown by the Alumni Office Staff, who organized the luncheon.

As a student, being so close to a sitting justice of the United States Supreme Court was almost overwhelming. At times I found it difficult to concentrate on the content of Blackmun's statements, focusing instead on his mannerisms and speaking style. Perhaps what surprised me most was how very human Blackmun is.

BLACKMUN from page 1

before the lecture. During a group exchange that concluded that USD law faculty members treat one another with due respect, Professor Minan asked whether members of the Court treat one another respectfully as well. Blackmun responded that they all have an "excellent relationship." To illustrate, he described a recent note Justice Scalia had sent him in which Scalia indicated he would vote with Blackmun, humorously adding that he [Scalia] couldn't understand why.

The office of Kathleen Quinn, USD Alumni Administrator, is responsible for the Nathanson Lecture. They initially made 200 tickets available to law students, but raised the number to 300 before the lottery drawing. Last year, too few tickets were earmarked for students. This year, all 67 students on the waiting list were seated.

Blackmun effectively mixed humor into his speech. He strode through the red velvet curtains to the podium and addressed the audience: "I've never come through a curtain like that before. I think I'll mention it to my colleagues and see how far I get."

After warmly mentioning the previous eight Nathanson lecturers, he gave the audience a flavor for what it's like to sit on the land's highest court by reading from some of his recent mail. "'Dear Harry, I hope you decide to leave the Court as soon as possible.... An American Patriot.'"

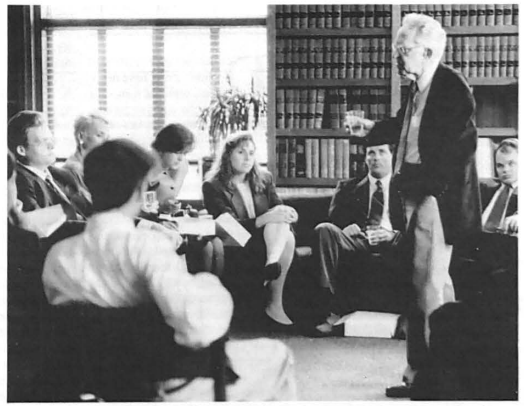
The Nathaniel L. Nathanson Memorial Lecture Series is given each year in honor of Professor Nathanson, who taught law at Northwestern from 1937-1977. He spent alternate semesters at USD, until his death in 1983.

While it was rumored that pro-life demonstrations would be held around the Blackmun lecture, there were none.

The lecture was briefly interrupted by a sharp sound that sounded to some like a gun shot, but a member of the audience had only fainted.

Neither Blackmun nor Justice O'Connor, the 1992 Nathanson Lecturer, asked for or received an honorarium for speaking. USD pays only for air fare and accommodations.

Kate Callen contributed to this article.



MESMERIZING: *Professors Lee's students were among the lucky few who had the opportunity to see Justice Blackmun the ABC way, up close and personal.*

The Lecture: Change in America

By Gregory T. Lyall

Motions Cub Reporter

Change in America was Justice Blackmun's topic for the ninth Nathanson Memorial Lecture April 7. With change as his theme, Blackmun alluded to his own pending retirement with wryness and humor. Asked the day before President Clinton's inauguration if he would resign the next day, Blackmun replied that it might be a "little unseemly." He described a visit by President Clinton and Vice President Gore to the Supreme Court: "I doubt if there was a hand that wasn't shaken." But he had a "feeling of when are you going to retire?"

On potential changes in personnel at the Supreme Court, Justice Blackmun listed the illnesses of the five older members: Rehnquist has a bad back; Blackmun and Stevens both have had bouts with prostate cancer (Blackmun believes his to be presently cured); and O'Connor has had breast cancer. Of the "four juniors" he commented, "They look healthy enough."

Blackmun said more than once in his talk that he doesn't think the retirement of Justice White coupled with his own imminent, but unannounced, retirement will affect the course of the Supreme Court. He expressed some surprise that the conservatives of the Court, whom he implied to be all but he and Justice Stevens, do not vote as a block more often.

If change comes to the Court, it might come in several ways. One would be for the Court to take a different view and overrule established precedent. Justice Blackmun tellingly chose to quote Felix Frankfurter on this possibility: "Better that wisdom comes later than that it never comes at all."

He had an opportunity to privately discuss the qualifications for a Supreme Court justice with then President-elect Clinton. His advice: "I hope, Mr. President, that when it comes to naming federal judges, particularly Supreme Court justices, that you will not apply any litmus test on a single issue." Among other qualifications, he suggested "above all, integrity of the highest order."

Blackmun metaphorically contrasted change with stability. Displaying the poetic sensibility that frequently appears in his opinions, Blackmun extolled the virtues of the "outlook" from the Virginia apartment in which he and his wife Dottie have lived for twenty years. The view is panoramic, looking out east over the Potomac, Georgetown University, the National Cathedral, Washington Monument, Lincoln and Jefferson Memorials, and the cherry trees, ready to bloom. "It is constant and it is always there, friendly, solid, warm. There is comfort and assurance in it."

Highlighting the three issues that caused the most concern on the Court last year, Blackmun said that *Casey*, the Pennsylvania abortion case, had been a "brooding presence" all term. Redistricting also presents a difficult issue.

Yet, it was for the "constant pressure and presence of the death penalty" that Blackmun reserved his longest treatment, stating that it has the greatest emotional impact at the Court. Blackmun said that he has not yet personally reached the point of believing the death penalty violates the eighth amendment, as did Justices Brennan and Marshall, but he is close. He does believe that the death penalty contains "no element of deterrence" and is rather motivated by revenge. Quoting Judge Learned Hand, he said that death penalty procedures are haunted by "the ghost of the innocent man convicted."

He reported that, in California alone, 300 prisoners wait on death row. A recent study showed that in the 20th century it is likely that 23 innocent people have been executed. In Texas, one or two inmates are executed each week. Each case reaches the Supreme Court on habeas proceedings, usually more than once, and the Court often takes all night to deliberate. Every night before going home, Blackmun asks his clerks if an execution is scheduled in the next 24 hours.

Blackmun ended on a note of hope. As he travels around the country, he senses a "feeling of anticipation," that the country is looking for leadership, that "ranks should be closed, and we should move along."

The fifty minute talk closed with the Serenity Prayer that begins, "God give us the grace to accept with serenity the things we cannot change." And, "as Thurgood always said, 'Keep the faith.'"

Book Review:

Anita Little Truth

By Robert Little
Motions Staff Writer

David Brock is a persistent investigative reporter. When every other journalist packed up his notebook or microphone and left the Anita Hill-Clarence Thomas controversy, Brock stayed on for a two-year tour of duty, maieutically bringing forth truth from witnesses on both sides. His blockbuster conclusions were published Apr. 12 in "The Real Anita Hill: The Untold Story." If you do not hear about this book, it's because precious few in the media will discuss it. Why won't reviewers and television producers book Brock? Because of his conclusion: either Hill lied or dozens of others lied for no apparent reason and with no unifying connection. After you read his book, you'll have no doubt unless your analysis rests solely on ideology.

Brock exposes California Administrative Law Judge Susan Hoerchner, who provided keystone testimony backing Hill. Hoerchner told Senate staffers that Hill told her in early 1981, while both lived in Washington, that she was being harassed at work by her supervisor. But Hill started working for Thomas six months later and in her own testimony alleged harassment starting ten months later, after Hoerchner had moved to California. After this testimony, Hoerchner paused, broke off the interview, spoke with Hill's lawyer, then returned and changed the story; after advice from counsel Hoerchner couldn't remember where or when she heard of the harassment.

But Brock found more. He lays bare the myth of Hill-*qua*-conservative Republican. He points to a chain of allegations of sexual harassment, later proved false, that Hill lodged against supervisors. He catches Hill in a romantic relationship with James Brudney, chief Judiciary Committee staffer to Sen. Howard Metzenbaum and alleged leaker of the testimony. And he unmasks Hill's veracity in light of a long series of lies, from the insignificant to the sublime, all in complete earnestness, before FBI investigators, Senate staffers, before the Committee under oath, and before the American people. Why, for example, did Hill say she had not taught a civil rights course in five years, when she had done precisely that one semester earlier?

Brock's most damaging evidence comes from several signed, sworn affidavits from students of Hill at the University of Oklahoma School of Law. These students tell of a Prof. Hill America has never met: a politically correct academic, an erratic observer (as when she said that Thomas deserved the nomination to the Supreme Court), and a perpetrator of bizarre, scatological sexual harassment herself.

You'll have to go get your own copy of the book to get the details - or check it out from the law library. But don't wait for the "60 Minutes" profile of Brock.

Bye

By Dallas O'Day
Motions Staff writer

When I look back on my thrill-a-minute stint at the purgatory that is the University of San Diego School of Law, two questions always seem to come to my mind. The first is, "What the hell was I thinking when I applied to law school?" and the second is, "What have I learned?" Since I have no printable answer to the first question, I'll try to answer the second. And no, the answer is not "c."

The first thing I've learned is that I'm not likely to find my life's companion in law school. You know how it is - you go off to school without intending to find someone, but so many people seem to find their spouses in school that you just sort of accept that it will happen to you, like karma or kismet or whatever. I didn't find her in college, when I was drunk more often, so perhaps this isn't surprising. Still, I entered law school thinking that this was the place where I would probably meet Ms. Right. After three years of meeting Ms. Women's Rights, and way too many Ms. Lefts, I'm fairly certain that the only way I'll meet the future Mrs. O'Day is by either moving to the South or getting one of those mail-order brides from Russia.

The second thing I've learned is that I'm very happy not being on law review. At first I was bummed, but not any more. Not for me the casenotes, comments, and boring cite checks. No dealing with balky faculty advisors. No, I had more free time, less aggravation, and the same lack of current job prospects as many of my colleagues on law review.

The third thing I've learned in law school is that law students are, in general, not the biggest party people around. At UCLA, when I was an undergrad, parties never got started until 10:30 or 11pm and only ended around 2 or 3am. At USD, law student parties are dead by 11, and by 3, law students are waking up so they can get to school early and find a parking space. Notable exceptions include the Erie Street crew, Dean Spizzirri, and Section C in this year's crop of first years.

Another thing I've learned is that law school increases one's skill at hurling insults and indulging in other forms of trash talking. For example, I'd say that even though Keith Nussbaum was probably a great trash talker at American, his abilities have been honed to a fine edge here at USD. The only times I've been able to step on the guy are when USC played UCLA and Notre Dame in football the past two years. Unfortunately, he got me back pretty good when USC played UCLA in hoops. Still, the Nuss has a bright future. I predict he'll wind up a celebrity like that lawyer who goes to Bullets games and harasses the other team.

Yet another thing I've learned is that people are crazy. Actually, I knew this before, but it was only when I heard that many of my classmates actually voted for someone like Barbara Boxer (my roommate Hollywood even worked on her campaign) did my naive belief that law students were exceptions to this characterization finally expire. Other incidents contributed to the reinstatement of this opinion, such as Cal and Bob Lipske conning me into bungee jumping, watching Jeff Dunavant literally throw his skis down a slope at Aspen, listening to Luke Ryan laugh that manic laugh of his, and just hearing Hollywood talk.

That's it. Oh yes, I did learn a few case names and legal doctrines along the way, but I figure a little time will ensure that I forget all that very soon. Good luck to all in the job hunt, even to you left wing bozos who have bugged me for the past three years. I'm through here.

A Rallying Cry to All

By Cynthia Hocking

During the time I've attended school here, I have never heard someone mention a resolution to the daytime parking problem that to me, is so simple, efficient and cheap. Get rid of those inane white lines limiting parking on the streets.

So much space is wasted between cars. An extra 20-30 spaces a day plus turnover could be available if those ignorance-presuming lines were eliminated. The space provided is enough for a Cadillac or truck and leaves almost half a car length of wasted space when an ordinary compact is parked. Cars only need about two feet on each side to park or get out - even one foot will do when desperate.

I know. I lived in San Francisco, two blocks from Chinatown, and parallel parked everyday. In all the cities I've lived in - San Francisco, Cambridge, Paris, Washington, D.C., and three blocks from UCLA - the only city that drew limiting lines on the street was Bakersfield. That ought to tell you something.

It is an inefficient way to use space in this University that is supposed to be so progressive. Students, and particularly women, were not built to carry 18 pounds of books when forced to park in outer lots. (That is only two classes worth for me and doesn't include a lunch and purse.) I have had to see a neurologist to find out that it was causing me muscle spasms besides constant backaches. *But I guess the administrators who have close parking spaces and don't carry books don't understand.*

If the school really cares about us, it seems they would do everything possible to create as many parking spaces as possible. No excuses, such as dented cars or traffic jams when people are parking, will hold up. My car was never dented in 15 years of driving. Students here are not 16 year olds who don't know how to parallel park - but more often are either dorm-dwellers or commuters, smart enough to be in graduate school and experienced enough to park properly.

And while I'm at it, why does USD feel justified in doubling a parking fine after just two weeks? Does this school which charges $15,000 really need money so badly that it is willing to act like a loan shark and charge huge fines?

A typical parking ticket here costs $20-$30 for a moment's imprudence. Ten working days are provided to appeal or pay up before they demand $40-$60.

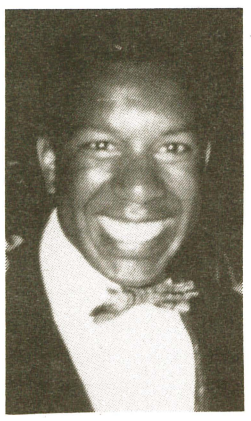
Besides, the school holds the trump card here, guaranteeing payment. The rules don't allow students to take their finals if they owe the school fines. What is USD afraid of? Does this school only want the attendance of rich students who can get here at 8am to park? It's no wonder the school isn't more diversified.

BAR REVIEW:

P.B.: THE BOYS HIT THE BARS

CASS STREET BAR & GRILL
4612 CASS STREET

Hollywood: Point your pole to Cass St. to reel in beers and babes - also useful for the two pool tables. Cass St. attracts a freshly scrubbed clientele which is very cute and very friendly. All girls are required to wear shorts or denim skirts and usually sleeveless denim shirts. Individual style is not in vogue here. When schmoozing beware of asking questions which will elicit the ubiquitous response of "Been there, done that!" which will end the conversation but will produce squeaks of joy from the party and surrounding friends. SWM likes to hold court and dispense his knowledge of the English classics to those who aren't as well versed as Hillary Clinton. The guys are all clean shaven and baseball capped. Don't go here after work wearing a tie, just ask Paul, the perennial Moot Court champion.



The cuisine at Cass St. is surprisingly tasty. I particularly recommend the chicken sandwich, which is grilled to a moist, tender perfection and seasoned to guarantee a burst of flavor with every bite. The beer is basic: pitchers of Bud or Bud Lite for $8. The decor features a gorgeous ceiling painting of the Florida coastline (I think), stuffed and laminated game fish and the best neon sign in P.B.

Cass St. is the P.B. local bar. It does not have a parking lot like Fibber's or the Old Ox, only a bike rack. Nevertheless, the place emits the raucous bar sounds of boisterous conversation and clattering glasses round the clock. At 11am when it opens, the barflies left over from Henessey's (nee Tugg's) congregate in the corner by the door and never seem to go home. Cass St. is also the favorite spot of our quirky "Save the Earth" professor.

Single White Male: I used to love Cass St., but now it grates on me like the sound of Hillary Clinton's voice. It's a bar with good food, a great location, and too many people. It doesn't matter when I get there, 6pm or 1am, it's always crowded and you can't get near the pool tables, and if you do, you're sure to have the cue jammed in your ribs by some drunken idiot. The food is fine, but this is relative excellence: the fact is that the food in other P.B. bars is so bad that Cass St. comes Aid when the checks arrive. It takes forever to get beer from the waitress if you're not near the bar, and you can grow very old trying to catch the bartender's attention if you are lucky enough to break through the crowd itself.

Otherwise, Cass St. is a good bar with a young, fun and casual crowd, although I wish I didn't have to see so many Colorado Rockies caps. The decor is cool: American Dive with a dash of Trophy Fish. Classic rock blares at a high volume as background music. Beer is beer, although I don't think it's asking too much to have more than Budweiser on tap.

Your best bet would be to have an early dinner here and then move to Stinger's, Plum Crazy or the Tiki Bar, unless you want a crowd which resembles Disneyland on a summer holiday weekend or enjoy a bar where it takes five minutes to navigate from one end to the other.

THE PENNANT
2893 MISSION BLVD.

Hollywood: Spring Break for those who want to slum it. I will never understand why people park a mile away to come to this God-forsaken, rat infested bar to drink beer from ten-ounce plastic cups! Either my Spring Breaks in Palm Springs, Hollywood or South of the Border were particularly good, or this bar is particularly bad. Its patrons could at least shower. This slum hole should be condemned, and it would be if the fire marshall were brave enough to enter this neck of the woods where the would-be patron is forced to walk through a gauntlet of car radio thieves disguised as young runaways and escapees from county jail. I wouldn't come here after dark.

On the other hand, I do know one married couple who met here. I suppose if one gets drunk here, one could say anything - even ask a girl to marry. Lucky enough the girl was drunk enough to accept. This place is a favorite of USD undergrads, so if you want to imitate Tina's brother and hit on women with braces this is the place to go.

I will concede their rooftop patio does have possibilities, yet it's closed at night so brewing up under the stars is not possible. During the day the patio is open, yet there is no reason to come here when Lahaina's is down the beach, unless maybe you want to watch a game on a small screen television.

Single White Male: Mission Beach attracts a fair number of scumbags and beach rats to its shores, so it should come as no surprise that Mission Beach's premier bar should reflect the grubbiness of its clientele. The Pennant will never be mistaken for Japengo, and thank God for that - no pretentious ex-yuppies trying to scam babes by wearing their suits and loudly mentioning their occupations to impress the opposite sex. No ridiculously overpriced drinks and "easy listening" music in the background. The Pennant is a great bar because it is everything Hollywood dislikes: casual to the extreme (shorts and T-shirts are the dress) and not the place where one goes to pose to "see and be seen."

The Pennant's clientele consists of mostly surfer dudes and dudettes and USD and SDSU students. Conversation revolves mostly around sun, surfing and drinking. Still, it beats hearing 1Ls cry over their grades and second years bitch and moan about their busy schedules. The only problem is that this scenario sounds like a chat with Matt Murphy ("Dude, it was epic today at the jetty.") or Dean Spizzirri ("Dude, went for a 200-mile bike ride today so I can only drink 10 beers.").

The Pennant is a seedy place with friendly, fun, FUBARed people who don't give out points for status or polka-dot shirts. So dress down and head over to the Pennant for a night of heavy drinking and talking with people who provided the inspiration for "Wayne's World."

EDITORIAL

CAMERA READY ART: *Editor in Chief Stacie Brandt looks forward to a long vacation.*

Motions will soon submit entries to the ABA Law School Newspaper Contest. The following authors are among the finalists for submission. For feature article: **Jim Kuperstein** for "Order of the Coif" (Mar. 11), Professor **Bernie Siegan** for "Comment on Lucas" (Oct. 13), **Willy Browning** for "Blackmun's Jurisprudence" (Apr. 26), and **CPIL Staff** for "Werries Persuades Pest Control Agency" (Dec. 2).

For humorous article: **Jeff Gaffney** for "Gringo on Safari" (Jan. 27), **Chris Trunzo** for "Parking Lot from Heck" (Oct. 13), **Dallas O'Day** for "The Spirit of '60" (Jan 27), and **Susan Kang** for "Interviewing Tips by SNL's Cajun Man" (Oct. 13).

For opinion piece: **Judy Carbone** for "Adding a Verse of Justice" (Dec. 2), **Sandy Johnson** for "Evening with Professor Bersin" (Oct. 30), **Bill Collins** for "To Norplant or Not" (Feb. 15), **Bob Little** for "Religious Left" (Feb. 15), **L. Lucarelli** for "Thought Police" (Feb. 15), and **Jack Bournazian** for "Birth Certificate" (Mar. 11).

Working with *Motions* has been a personally rewarding experience for me. As a 3L who doesn't usually join clubs, I have been surprised at the difference being involved has made to me. As Editor, I felt an obligation to attend far more events than the previous two years. I'm glad I did because thoughts of Justice Panelli, Justice Blackmun, Joseph Perkins, and even the Law Revue talent show will stay with me far longer than details of public international law or dealings with the *Law Review* board.

WHO AM I, AND WHY AM I HERE?: *Publication director/cub reporter Greg Lyall ready to track down a hot news story brewing at the 'Mo Club.*

Thank-you to everyone who has made it possible to publish *Motions* this year, particularly Scott Slattery, our headline wiz, Elizabeth Genel, who discovered many heretofore unknown writers, and Greg Lyall, who made the paper look this way and is the only person who could have spent so much time with me. So many people submitted articles, and we printed nearly all of them. Many of you cared enough that diverse viewpoints should be heard to submit letters to the editor. Thank-you for overlooking our mistakes - we didn't have any previous newspaper experience. And good luck to next year's staff: Bob Little, Chris Trunzo, Tom Turner, Eric Siegler, Geoff Morrison, and Elizabeth Genel.

So, speaking as a third year, my final words are: Get involved. This would be a better place if faculty as well as students were more involved in law school activities. The classic law school movie, "Paper Chase," featured John Houseman as the curmudgeonly contracts legend, Professor Kingsfield. While the caricature Kingsfield maintained a distance from mere students far more removed than any USD professors I've met, he compensated by initiating contact with students on his own terms through his annual cocktail party. While our professors are more approachable, in fact, with a very few laudable exceptions, they do not attend any functions at which students might be present. Perhaps the Dean herself should take a leading role to encourage faculty and administration to attend more law school events.

Stacie L. Brandt, Editor in Chief

OPINION:

Behind the Center:
Taxes Are Just Another Dirty Business

By John Wallner

We all know taxes have been increasing, but few know just how bad things are getting. Consider these facts:

1) Suppose you paid all your taxes during the first part of the year and then were allowed to keep what you earned thereafter. That date is known as Tax Freedom Day. In 1930, it was February 13. In 1992, in California, it was May 7, six days later than in 1991. And if you don't think it can go higher, look at Sweden, where the date is in mid-September.

2) In 1948, the median family federal income tax was $9. Yes, *nine* dollars! In 1991, the median family income tax was $3,450.

3) In 1948, the maximum social security tax was $30. In 1991, the maximum tax was $5,123. For the self-employed, the maximum was $9,208.

4) The federal deficit is understated because of off-budget antics. The correct way to measure the annual deficit is to compare the national debt at the beginning of the year with the debt at the end of the year. The difference is the real annual deficit. In 1991, this figure was $477.2 billion. In 1992, for the first time we had over a one trillion dollar annual deficit.

5) The total national debt on March 22, 1991, was $3.448 trillion. By the fall of 1992, it exceeded $4 trillion. And this figure greatly understates the real debt because it does not include the massive unfunded pension liabilities of future bad debts such as the S&L debacle.

6) It took our country 204 years to accumulate the first $1 trillion national debt. It took us only 11 years to accumulate an additional $3 trillion debt.

7) Increasing taxes does *not* close the deficit. On the contrary, studies indicate that since 1950 each $1 increase in taxes has been accompanied by an average $1.58 increase in the deficit. The most recent 1990 tax increases resulted in the deficit growing over $1.90 for each $1 of increased taxes.

8) In 1950, the California budget was less than $1 billion. This year it will be at least $56 billion, and the spenders tell us that we "need" at least $8 billion more. *Per capita*, California taxes have zoomed from $92 in 1950 to $1,940 in 1991, far exceeding inflation.

9) Inflation is an indirect tax imposed by government. The definition of inflation is higher prices resulting form the supply of money expanding more rapidly than the supply of goods and services. Government controls the supply of money. Government gains from inflation because it creates false paper profits which can then be taxed (our country has the highest capital gains tax of any industrialized nation). For example, a $10,000 asset which rises to $20,000 because of 100% inflation is taxed upon sale as a capital gain, resulting in a $3,500 (Federal and California) tax windfall for government and a negative real return to the investor.

10) The inflation since 1948, caused by excessive government expansion of the money supply, results in us having to pay $6.08 today to buy what a dollar would buy in 1948. Stated differently, a 1948 dollar is worth only 16.4 cents today. Nevertheless, tax levies have increased at a rate several times the rate of inflation.

Derived from the "Wallner for Congress Position Papers: John Wallner on the Issues" - "The Issue: Taxation." The author is a 3L evening student at USD School of Law.

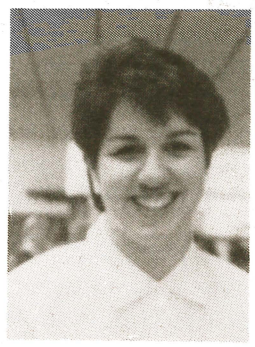
On the Left

The Healing of a Nation

By Judy Carbone
Motions Staff writer

Recovery and healing are terms usually used in pop psychology to refer to individuals and their relations to their families. It might be useful to expand the scope of the theory to include our communities and society - our nations of the world.

If we quickly review our own past here in the United States, we may better understand some of the problems we face today as a nation. The youthful history of the United States is unique. Some of us came here of our own choice - the search for "Gold, God and Glory" - to recall the term from seventh grade history class. Others of us were already here, living for centuries among the land and animals of what is now called North America. Still others were captured and brought here - their sole purpose was to serve the needs of the Gold, God and Glory crowd. And more have come here recently, in search of a "better life." In this context, it becomes easier to understand the difficulties our nation faces today in dealing with our diversity as a multi-racial and multi-cultural society.



Compare the U.S. with another, smaller country which has been battle-torn for centuries. Its people are still so in the thick of a struggle for identification, they are unable to begin their own quest for recovery.

Travel East. Go over all of our Eastern states and pass the Atlantic. Over Portugal and Spain and the Mediterranean Sea. Sail past Crete and Turkey. Stop. Armenia.

See **ARMENIA** *page 19*

Concerns About Scholarships Based on Neither Need Nor Remedy

By Brian Edmonston
Motions Staff writer

In the last issue of *Motions,* SBA President Robert Chong suggested that racially diverse students should be eligible to receive scholarships regardless of their need. His rationale for doing this was that, if a university wants diversity, it must be willing to compete in the marketplace for the limited number of available diverse students. The problem with this, however, is the characteristic of racial diversity substituted for diversity of viewpoint. The result of such an intellectually lazy substitution is an ineffective policy that creates pain, anger and hate, as well as one that sets a dangerous precedent for using race for other purposes in the future.

It is easy to understand why American universities simply substitute race, as opposed to actual viewpoint, as the criteria for awarding admission and scholarships under the label of diversity. It is a much easier policy to implement and administer. Diversity can be measured and tracked by having students check a particular box on the school's application for admission. Statistics can then be compiled and used to keep score against other universities. Diversity can also be advertised by conspicuously placing pictures of minority students on bulletins and admission materials. It is more convenient to use race as a yardstick than to attempt to measure diversity of thought.

Convenience, however, led the United States to place its entire population of Japanese Americans in internment camps during World War II. To determine which were faithful would have been quite difficult. Convenience also leads a police officer to arbitrarily stop a black man driving through a white neighborhood. To a police officer familiar with the neighborhood, the event seems out of the ordinary. Rather than spending more time to determine if there is any real probable cause, the officer investigates. Acts like these are carried out to promote positive, non-racist, purposes: winning the war; stopping crime. What makes them racist is that they are carried out in a manner that substitutes race for some other quality because it is more convenient to do so.

Increasing the diversity of a university campus is a positive, non-racist goal. When it is carried out by using race as a substitute for diversity, however, it becomes a racist act. Being placed in an internment camp or being unjustly stopped by the police creates feelings of pain and anger because one has been judged not by actions, but by race. These are the same feelings that are experienced by a white student who has been denied admission to a university or access to a scholarship, despite qualifications that merit otherwise. He has been treated differently solely because of his race, a characteristic he did not choose, and can not change.

Besides being unfair, this policy is ineffective. The proposition set forth is that, because I am a different race, I have experienced racism. I therefore have special insight and understanding into racism. The logic is faulty. If I am a victim of crime, do I understand the motives of the criminal better? Not really. Are victims of child abuse experts on parental violence? No. The fact is that child abuse victims are more likely to be abusers in the future, not individuals who are extra-sensitive to children. This faulty correlation between being a victim and understanding the problem sidetracks schools from obtaining truly diverse student bodies.

Certainly victims of racism can be drawn to study a subject because of their experience, but their knowledge will be the result of the research, investigation, and hard work they do. It does not just come to them as a result of any racist acts perpetrated against them.

See **DIVERSITY** *page 18*

On the Right

The Economy, the Election, and a Little Natural Law

By L. Lucarelli
Motions Staff writer

Before I launch into my final homily, I'd like to thank Elizabeth, Scott, Stacie and Greg for making Motions such an outstanding paper. When this school year began Motions faced a critical problem: no one wanted to run it. Enter Stacie Brandt and Greg Lyall, a couple of law reviewers with no newspaper experience, no need to supplement their resumes, and nothing better to do with their time. They took up residence (literally) in the *Motions* office and turned out high quality papers with some regularity. Greg's commitment to balance and Stacie's obsession with quality made *Motions* a publication that *Timeses* nationwide should strive to emulate. Their contribution is appreciated.

I would also like to thank the indefatigable Professor Siegan and the inexorable Professor Rice (Notre Dame). It was an honor to study under academicians of their stature, and each of them has played an important role in guiding my intellectual growth.

Now for the lecture.

The last election was not about "the economy, stupid." The nation was not in an economic crisis (California lawyers excepted), and will not be until President Clinton's budget and tax changes are enacted. Many people knew this before the election. Even those who believed in the "crisis" should have known that economic recoveries aren't affected by increasing taxes and using the revenue to fix potholes. The surprising thing is that those who do not feel differentially affected by Clintonomics seem willing to accept the lies with alacrity. Face it: those of you who feel strongly about Clinton

See **ON THE RIGHT** *page 18*

On Sexual Harassment

By Bill Collins
Motions Staff writer

There is no universal means to associate patterns of behavior and perception with gender, and generalizations about the sexes can only be founded upon anecdotal evidence. Generalizations are, however, relevant to a discussion of the rising numbers of sexual harassment suits being filed by women against porcine males in the workplace because they underscore the continuing misunderstandings between men and women that are at the core of the sexual harassment phenomenon. As such, it is not surprising that the statutory law in this area, namely Title VII of the Civil Rights Act of 1964 and the newly enacted Civil Rights Act of 1991, reveals the same lack of knowledge about male-female relations by using extremely ambiguous language that encompasses a wide and uncertain range of speech and behavior.

Since 1970, the number of employment discrimination suits, which includes a sizable number causes of action for sexual harassment, has grown by 2000%, but just what sexual harassment is remains somewhat mysterious. The Equal Employment Opportunity Commission (EEOC) currently defines sexual harassment as "unwelcome verbal or physical conduct of a sexual nature" that "unreasonably interferes with an individual's job performance" or creates "an intimidating, hostile or offensive working environment." While federal courts tend to rely on this definition, this attempt to encompass the wide-ranging phenomenon of sexual harassment with such all-inclusive terms is largely unsatisfying, and too open-ended for practical purposes.

The U.S. Supreme Court recently granted *certiorari* to a Tennessee case, *Harris v. Forklift Systems*, in an effort to resolve the definitional penumbra of sexual harassment. While future generations of law students may be able to learn about the subject in hornbooks, judicial pronouncements of what constitutes sexual harassment will not abate the prevailing level of misunderstanding between the sexes that is at the root of sexual harassment.

Title VII cases encompass both offensive speech that creates a "hostile work environment" and *quid pro quo* cases where a woman suffers employment detriment because she resists the sexual advances of a supervisor. Title VII embraces a wide spectrum of speech and conduct, ranging from the display of nude centerfolds on locker room walls to forcible coercion of sex. The pure blatancy of a woman being fired or demoted because she will not sleep with her boss is not at issue because such behavior is clearly violative of a woman's civil rights and warrants compensatory damages. What is at issue is the range of speech and behavior that creates a "hostile environment," because the current statutory language is so ambiguous that it is largely impossible to assess what constitutes offensive speech or behavior in any analytical manner.

In 1990, in *Ellison v. Brady*, the Ninth Circuit introduced the "reasonable woman" standard to assess whether a "hostile environment" was created in a Title VII action. This standard was adopted to overcome male bias in the reasonable person standard by focusing on the perspective of the female victim, and "not stereotyped notions of acceptable behavior." Unfortunately, this test, also adopted in other federal circuits, ignores the intent of the harasser because "men and women are vulnerable in different ways and offended by different behavior."

I applaud the protection that legislators and the judiciary have attempted to create for women to redress sex discrimination in the workplace, but the current statement of the law raises some concerns. Title VII and the "reasonable woman" standard for adjudicating sexual harassment cases ostensibly give women unilateral control over the speech of male coworkers without satisfactorily defining what is acceptable and what is unacceptable. Some have even argued that Title VII poses an undue restriction on first amendment free speech because of the vagueness and ambiguity of the standards for assessing what constitutes a "hostile environment."

'The misuse of the sexual harassment suit by unwitting, self-deprecating, or unscrupulous women may have an additional chilling effect on male-female relations.'

Moreover, in *NAACP v. Claiborne Hardware*, the U.S. Supreme Court held that judgments that rest, or might rest, in part on protected free speech are invalid because the first amendment demands "precision of regulation" over speech. In this context, Title VII may, arguably, be too ambiguous or over-inclusive to stand up to first amendment scrutiny, in spite of its obvious moral rectitude.

The workplace may also attain an Orwellian atmosphere by compelling employers to police employees' speech in an effort to avoid vicarious liability for sexual harassment. Although employers are not generally responsible for their employees' speech, they can be held vicariously liable when supervisors harass subordinates, or when an employer "knew or should have known" of a harassment situation and did not address the problem sufficiently. Courts determine whether a "hostile environment" exists by using a "totality of the circumstances" test, the most factually inclusive method to assess the validity of sexual harassment claims. One impact of this test, however, is that it becomes practically impossible for employers to dictate reasonably predictable or uniform standards of behavior and speech to employees when the line between acceptable and unacceptable speech and behavior is so shadowy.

Moreover, most of the women that I have met in law school are smart, tough, and fully capable of handling any confrontation with insensitive males. There are, however, women who are not sophisticated enough to be able to discern innocent teasing or clumsy approaches from mean-spirited discrimination, who lack the self-esteem to defend themselves, or who are pre-disposed to use sexual harassment suits to exploit the threat value for personal gain. Somewhat akin to bogus rape or child abuse charges, an unfounded allegation of sexual harassment can torpedo an innocent man's career and reputation. The misuse of the sexual harassment suit by unwitting, self-deprecating, or unscrupulous women may have an additional chilling effect on male-female relations, which have become strained and tenuous enough in the 1990s, as well as undermine women's efforts to gain acceptance in previously all-male workplaces by reinforcing attitudes of fear and resentment.

In addition, "hostile environment" claims are closely related to intentional or negligent infliction of emotional distress in terms of phenomenology, but unlike these tort claims, compensation can be awarded to plaintiffs in sexual harassment cases without the apparent existence of damages. Every first year law student knows that no tort exists without damages, but the *Ellison* court noted that "[c]onduct [constituting sexual harassment] can unreasonably interfere with work performance without causing debilitation and without seriously affecting an employee's psychological well-being." The EEOC has confirmed this sentiment in a 1990 Policy Statement by stating, "Plaintiff need not show psychological injury to prove hostile work environment sexual harassment; rather, it is sufficient for a charging party to show that harassment was unwelcome and that it would have substantially affected work environment of reasonable person." While subject to interpretation over questions of degree, the creation of a "hostile environment" that exposes a harasser to liability when little or no tangible damages need be shown demonstrates a curious absence of judicial or statutory guidelines to assess compensatory awards in sexual harassment suits. The efforts of courts and legislatures to protect women in the workplace are laudable, but the unpredictability of these awards seems to reinforce the old adage that the road to hell is paved with good intentions.

It is easy to argue that sex and gender should be irrelevant in the workplace, that all persons should be rewarded for their performance and skills, period. This proposition has moral suasion, but loses some validity when one steps back to rediscover that fallible human beings inhabit the workplace, work together, form relationships with one another, and compete with one another for the proverbial golden ring in the corporate environment. For better or for worse, these same fallible human beings are inescapably attached to their sexual identities, and manifestations of sexual identity by both men and women inevitably arise in the workplace, either as attempts at sociability or functions of competition and control. It is simplistic to think that either men or women can discard their socialization and innermost identities between nine and five o'clock, and the imposition of civil sanctions under Title VII simply will not change human nature.

'It is also obvious that many men need to alter their attitudes toward women in the workplace in order to eradicate the "glass ceiling phenomenon.'

It is also easy to argue that alterations in the workplace should occur to make the corporate ladder less of a precipitous climb for women *vis á vis* men, and that sexual harassment suits are merely a means of levelling the playing field. It is still, however, not much of an exaggeration to characterize the workplace within Adam Smith's concept of the competitive marketplace, and that power, control, and exploitation of weakness are hallmarks of the modern corporate business world. If we accept the premise that women seek to transcend "traditional" male notions of female subordination by competing as equals to men in the work environment, men and women of relatively equal intelligence and wherewithal already possess the tools to compete equally, exploit each other equally, and succeed or fail equally. In the context of unfettered capitalism, gender becomes as much of a strength as a weakness for men and women, the fragility of the "male ego" becomes the correlative of the "female sensitivity," and the need to alter the workplace through statutory enactment becomes superfluous. Sexual harassment allegations arguably posit gender differentiation as a function of subordination and weakness, which seems logically self-defeating for women who seek equality to men in the workplace. It would follow that those who retreat into the "gilded cage" of female sensitivity to offensive male behavior or commentary by resorting to legal recourse undermine the original goal of equal opportunity by reinforcing stereotypes of women as the "weaker sex."

There is no doubt that women have made great strides in achieving upward mobility in the workplace, but that discriminatory attitudes still remain. Women are still numerically under-represented in many management and executive positions, continue to receive proportionately less pay than men for many jobs, and assertive women are often perceived as "bitches" where men are regarded as "aggressive." It is also obvious that many men need to alter their attitudes toward women in the workplace in order to eradicate the "glass ceiling" phenomenon and to genuinely provide women the opportunity to compete with men on an equal footing. Title VII in its current standing, however, misses the mark by attempting to delimit individual thought processes through civil sanctions rather than promoting responsive free speech to persuade changes in attitude. For any woman out there who has been genuinely discriminated against because of her gender, I truly apologize on behalf of all members of the male of the species. But, sexual harassment suits compel a unilateral change in behavior that only addresses one half of the problem. Women need to make the effort to understand their male counterparts without falling into the same trap of generalization and stereotype that seems to plague my gender. Sexual harassment litigation may vindicate certain women's rights in the workplace, but other than creating a whole new class of judgment debtors, it does not address the basic gap in understanding between the sexes that is the real crux of the problem.

The author is a 3L who plans to take the Georgia bar this summer.

BLAZERS AND SHORTS: *Charter members of the Bayside Barristers Club convene their weekly martini meeting. All are invited every Friday to share common interests. Blazers required. Left to right are Bill Collins, Scott Slattery, Brian Edmonston, Greg Lyall, Paul Hora, and Dallas O'Day.*

Some Suggested SBA Reforms

By Brian Edmonston
and
Matt Frank

Nineteen ninety-two was a water shed year in American politics. If you believe the post-election polls, Americans voted in large numbers, in the quirky jargon of H. Ross Perot, "to clean out the barn." Americans voted to return government to the people by taking it away from special interest lobbyists who put their own interests above the national interest. At USD that same spirit has not caught on.

Voting rights

Ask yourself, "Should organizations such as the American Tobacco Association, the National Rifle Association, and the American Medical Association be able not only to lobby congress, but to actually vote?" If you don like this idea, you may have a problem with the Student Bar Association: This is essentially how the SBA operates. The SBA is comprised of two elements: its generally elected officers, such as the president and the treasurer; and organizations that receive funding, such as the International Law Society. These SBA-funded organizations internally appoint representatives who then become part of the SBA government structure. Group representatives not only attend SBA meetings, comment and present proposals, but also vote. This practice gives these groups an inordinate amount of influence within the SBA.

The SBA has nineteen elected, voting members. In addition, approximately twenty-one law school groups receive SBA funds and a vote at meetings. This ratio shows the degree of overrepresentation these groups receive. The effect is to give students who are members of groups a greater representation than those who are not. For example, each vote equals about 2% (1/52) of the of the SBA. A group with ten people in it, however, represents only about 1% of the population. Adding their popular representation of 1% with their SBA representation of 2% shows that they enjoy three times as much power as they would in a straight democratic system. When you realize that there are many small groups in SBA, you see that a great deal of power is held by a small fraction of the school population. It is no wonder that SBA doesn't focus on the issues important to everyone, like the computer lab, receiving grades within a reasonable period, and career services. Reform is needed.

The solution is to grant voting rights only to elected representatives. The student government groups should be free, as usual, to attend SBA meetings and share their points of view. This solution is consistent with the goal of fair and democratic representation while at the same time maintaining active communication between these special interest groups and the general population at large. However, when the time comes to vote, only generally elected representatives should exercise that right.

Increasing cross-cultural understanding

The USD Law School actively pursues the policy of maintaining a diverse student body because it recognizes that exposure to students from many cultures and backgrounds is an important part of our educational experience. Unfortunately, some of the steps we take to encourage diversity may actually reduce the intended benefit. Specifically, while SBA groups based on race and sexual orientation provide a place for students to organize and plan specific agendas, they also reduce the interaction between each group's members with the rest of the law school. Someone active in La Raza, for example, will spend much of his or her non-study time working with others from his or her own culture. This reduces any reciprocal exposure between that person and members of other cultures, including the so-called "dominant" culture. This effect is contrary to the very objective of diversity within the university and, in fact, balkanizes the law school.

An alternative would be to form groups that focus around legal issues or policies as opposed to race and sexual orientation. Civil rights and immigration law are two areas that come to mind. Simply changing the names of these groups would make them more open to membership from the general student body. Those causes currently being pursued in the groups based on race could still be addressed in these new groups. To stop using names based on race would increase the interaction between people from the dominant culture and the other cultures at the university. We believe this would create a much more rewarding environment for those who participate in SBA. It would also facilitate the understanding that needs to take place between all the cultures that inhabit this law school.

Insuring groups represent their constituency

The method by which each SBA organization elects its leaders is usually left up to the individual organization. In some instances, however, the university might need to step in to ensure that power and funds are not abused. For example, the Women's Law Caucus received the fourth largest SBA funding grant this semester, $2,150, after Moot Court, Phi Delta Phi, and Intramurals. They also receive funds through the faculty auction. The name implies a connection with the women members of the USD law community. In fact, by using the word "women" in their name, they would seem to have a duty to reflect the general interests of the female law school population. On the contrary, the WLC's procedure for electing its officers is designed to insure no such reflection.

The WLC board meets secretly to select the next year's twelve leaders. No doubt the new leaders are individuals who best reflect the views of the previous twelve officeholders. This method leaves little or no room for dissent and makes it unlikely that the interests of the female law school population are actually represented. This abuse should be stopped either by requiring them to remove or qualify the name "women" in their title (perhaps by inserting the word "feminist"?) or by requiring them to hold open elections for their offices. For example, Phi Alpha Delta has their entire membership vote on new officers. Groups that claim to represent a specific population of the university must be forced to take into account all the views of their constituency.

All in all, our SBA actually does an excellent job of keeping people active in the legal community. However, we should always be on the lookout for ways to improve its responsiveness to the student body. By implementing some of these suggestions, our school can be a leader in democratic student government.

Students Respond To

Well, I suppose it was inevitable that "ethnic cleansing" would eventually reach USD - at least that seems to be the policy underlying the "modest proposals" put forth by Misters Frank and Edmonston. They are apparently willing to tolerate diversity so long as the student body stops acting diverse. It seems wholly unremarkable that students from nontraditional backgrounds tend to view the world differently from other students and often have different political views, values, and interests. It is also unremarkable that such students would form support groups to provide a sort of buffer zone against the sometimes hostile and often indifferent reactions of other students towards them and their interests.

I'm sorry Brian and Matt, but the proper goal of diversity is not to bring students together in ways that ignore or eliminate their differences, but rather to bring students together in ways which allow them to engage and understand their differences. This distinction is significant. The latter goal is a necessary part of the education of all persons living in a multi-cultural society filled with racial, ethnic, gender, and sexual orientation differences. The former is the ideological equivalent of ethnic cleansing.

Levis Perry
Angela Z. Moore

Mr. Edmonston and Mr. Frank appear to be sadly misinformed regarding the role of student organizations and increasing cross-cultural understanding at USD.

Their statement seems to be rooted in the assumption that the sole objective of diversifying our law school is to benefit white students, or the "dominant" culture, as they refer to us. As one of several white members of La Raza, I have had the opportunity to understand that one of the primary goals of the organization is to support and empower its membership, Latino or non-Latino, in finishing law school so that they may become leaders in the legal community. Two years ago two La Raza members out of approximately eight who started at USD graduated. Last year, we graduated all but one. This year, proudly, every member of the entering class will graduate. We have clearly met one of our most important and stated organizational goals.

If the "objective" of diversity includes having people in our law school which reflect the diversity of the population, then organizations like La Raza serve to meet that objective. We help to keep our members in school.

As an active member of La Raza, I take strong offense to the assumption that since the group is called "La Raza" it excludes non-Latino students. La Raza does not discriminate based on race. I am clearly only one example of this - we have other non-Latino members, several of whom have served as officers of La Raza. I also take offense to their point that we spend our time exclusively with other La Raza members. We are active in virtually every law school organization from Intramurals to the SBA. One member worked to develop the Street Law Teaching Program, recently incorporated into the curriculum, which will benefit all law students as well as the community. The Tijuana/Tecate Relief Fund is another example of our outreach. Although La Raza sponsored the raffle, members and non-members of La Raza bought and sold tickets, solicited donations for prizes, and overall contributed to the overwhelming success of the event. The funds that were raised were donated to two community organizations in the name of the University of San Diego, not just La Raza or its members.

I am proud of my affiliation with La Raza. In my opinion, the organization does not need to change its name to accommodate anyone. It is already a welcoming environment - one in which I have grown, felt supported, and learned about the Latino culture during the past year in which I have been a member. If you are interested in working with us, please join.

Judy Carbone ***Member, La Raza Law Students***

Proposed Reforms for SBA

The assault by Mr. Frank and Mr. Edmonston on organizations and the necessity for reform leaves suspiciously unscathed any "majority-type" group. This clear refusal to accept any responsibility these groups may have or should share in the need for reform is self-serving. This denial obviates the need for continued existence of "minority" organizations. I understand it may be difficult to see one's own faults; thus others should provide a mirror for reflection.

Mr. Frank, you argue for fair representation; however, your immediate response as SBA Elections Committee Chair was "No!" to a request to extend the polling times to accommodate evening students' schedules. You made this decision unilaterally without a committee meeting. A meeting subsequently was held, sparked by student outrage to this blatant lack of concern on your part to an entire class of students. Your concern about fairness appears dubious - I suppose fairness is a matter of perspective.

Claudia Gacitua ***Vice President, La Raza Law Students***

It is incorrect to suggest that GALLSA (Gay and Lesbian Law Student Association) is an exclusively gay/lesbian organization. GALLSA's by-laws specifically state that membership is *not* based on sexual orientation.

Mr. Edmonston and Mr. Frank might actually learn something about our lives if they join GALLSA. I encourage Mr. Edmonston and Mr. Frank, if they are interested in pursuing a dialogue with GALLSA members, some gay, some not, to initiate contact through me.

Margaret Burks ***Co-Chair, GALLSA***

In response to the opinion piece by Mr. Frank and Mr. Edmonston, I would like to indicate my perspective on the role of "status" or "minority" groups on campus. Although I understand how these groups theoretically could have an insulating or separatist chilling effect on students' interactions, I believe this risk has not manifested itself in the three years I've attended this school. If one objects to the allocation of space in the Ritz to these groups, on behalf of the Black Law Students Association, we certainly do not object to sharing space with other student groups. Currently we share space with APALSA, the Asian Law Students Association, and have shared space with the Environmental Law Society.

The purpose of these groups is to represent student concerns, mainly through the SBA. For example, BALSA has helped other groups in organizing the Minority Law Students Day on campus and bringing speakers such as Jesse Jackson, Jr., to campus. It is my understanding that any group of students can petition the SBA for membership - without a "quota" or numerical minimum of members. Again, if one wishes to change the policy and evaluate the memberships solely on numerical consistency, again the SBA is the proper forum. As a member of PAD and one who regularly attends functions sponsored by the Women's Law Caucus, I think it is worthwhile that two of the law school's largest organizations receive the most SBA funding; however, being PAD's representative to the SBA last year, I always voted to allocate funding according to the merit of the idea, not according to how many people were in the group sponsoring the idea, as I believe others did as well.

In conclusion, I wish these groups would have members who do not belong to the groups because of status, but because of ideology. I do, however, acknowledge my personal hypocrisy of attending many a WLC function but being too cheap to pay their membership costs.

Christopher Harris ***USD Law '93***

The Author Responds

After reading the letters responding to Matt Frank's and my article on SBA reform, I have the following comments. Two of the five responding letters invite me to join their particular group. Another speaks of bringing students together. I would like to do both. I only ask that I not be required to join a group whose title explicitly does not include me. Many others feel the same way as evidenced by the lack of cross-cultural membership in these groups. By renaming these groups, the chances of someone like me joining them would be increased substantially. Perhaps some are satisfied with the present level of cross-cultural contact. I, however, am not.

Regarding the idea that elimination of these groups threatens the existence of each particular culture, I can only assume this is an exercise in rhetorical excess. Each culture has developed in the past without the help of SBA societies, and I am sure that they will continue to flourish without them in the future. Law school provides each of us with the unique chance to get to know about other cultures: the minority about the majority, and the majority about various minorities. I claim groups based on race balkanize society. Mr. Perry claims removing such groups is ethnic cleansing. Look at your own law school experience to decide which is a more accurate characterization.

As to the Women's Law Caucus, it's all about false advertising. The internal goals and election practices of the WLC are not the same as the ones they present to the student body, or apparently to their own members. I suggest, before any more first-years are misled, a general referendum be held next year asking people whether WLC should be forced as a group to change their election practices, and whether a name change is necessary in order to make the group's goals clear to everyone. I would also like to point out that *Law Review* does not receive SBA funds, and Moot Court is not an advocacy group.

I sincerely hope that the article in question is not interpreted as an attack, or that anyone feels they are not welcome on this campus as a result of it. Nothing could be further from the truth. I just wish to get the most from the diversity we have. Discussions such as these, while emotional, only enhance the understanding of what these groups are about and how they are perceived by others. If people really believe that these groups promote understanding and are necessary to the success of their members, then perhaps they should continue to exist. From my perspective, they just don't seem to accomplish either.

Brian Edmonston ***USD Law '93***

LETTERS: The usual policy of Motions with regard to letters is to accept them for the issue following the article to which they respond. Because this is our last issue, we pre-released this article to potentially concerned parties.

Cal. Western Sends Their Best!

My congratulations to Prof. Wharton, Messrs. Hora, Gamberdella and Celatka, and Ms. Segal, USD's winning team in the Western Regional ATLA Trial Competition ("Trial Team Takes First in Regional ATLA," Mar. 11. 1993).

As you might well imagine, I was flabbergasted to read Mr. Hora's generous and kind comments concerning my presentation during the tournament.... Although it is true that there is a bit of a rivalry between CWSL and USD, I am happy to observe that members of our respective teams treat each other with mutual respect and cordial professionalism.

I would agree with Mr. Hora that CWSL and USD were the cream of the competition; perhaps having a healthy cross-town rivalry has raised both programs to a level above the other schools who participated.

Keith Puckett-Hart ***California Western School of***

WLC Elections Criticized

I am writing to make public concerns I have about the Women's Law Caucus constitution, as well as concerns about the way in which WLC Board members are selected.

My primary concern about the WLC constitution is that the general membership was never consulted about its contents. Regardless of the fact that the WLC constitution is simply a reflection of already existing bylaws, bylaws of which I do not think many (if any) first year members were aware, I feel strongly that the WLC should have held a constitutional caucus, or at the very least, alerted the general membership to the fact that a constitution was being generated and given the membership an opportunity to participate. As things stand, the constitution can only be amended by a two-thirds vote of the Board, which brings me to my second point.

I am also concerned about the way in which WLC Board members are selected. The current method is to have people apply for positions, and then Board members select which individuals will be invited to serve on the following year's Board. Board members who wish to hold a position on the next Board are generally given the position, and this year, the Board put off selections until after the SBA elections in order to give those members a chance to retain a Board office in case they did not get an SBA office. The general membership of the WLC, each of whom pays money to join, has no say in Board selections, and as a result is again blocked from influencing the constitution in any way, as only Board members can alter the document.

LETTERS

Similarly situated organizations such as APALSA and BALSA hold officer elections. Granted, these organizations have a smaller membership than the WLC; however, if the SBA can manage to hold elections with minimal fuss, it should not be much more difficult to hold WLC elections. One argument I have heard against having general elections in the WLC is that it would turn into a popularity contest in terms of who would hold Board positions. I question, however, whether the current system is really any different; further, I find it paternalistic to assume that the general membership of the WLC could not make intelligent choices as to its leadership based on qualifications rather than popularity.

I am not the only person with these concerns about the WLC constitution and method of Board selection. I encourage those who agree with the sentiments I have expressed here to clip this letter, sign it yourself, and drop it off at the WLC office in the Writs. The WLC is a strong organization which accomplishes a great deal on this campus, and for that it deserves much praise. The organization could be stronger, however, if a more democratic system were adopted both in terms of Board selection and approval of the constitution.

Larissa A.J. Kehoe ***USD Law '95***

WLC Responds

This letter is in response to articles regarding the Women's Law Caucus.

First, questions have arisen about the process by which WLC selects its Board of Directors. WLC selects its Board in a fashion similar to the Law Review and Moot Court Boards. Like those organizations, the WLC Board has the best opportunity to gauge the applicants' commitment and ability to work together.

WLC's success is based on teamwork because it has a twelve-member Board of Directors without a hierarchical structure.

Within the team, each Director has specific duties, the performance of which contribute to the smooth functioning of the organization. The effectiveness of the Board, and therefore the number, quality, and variety of the events that WLC presents, depends on individuals being placed in positions in which they will be most effective.

Another issue that has arisen concerns SBA funding of WLC. In addition to WLC's own fundraising efforts, WLC receives substantial funding from the SBA. WLC receives this money because of its commitment to presenting events that are open to all law students and faculty. For example, WLC sponsors an annual image workshop for both men and women. Additionally, WLC has offered speakers on topics such as juvenile law, interviewing strategies, networking, and the impact of Martin Luther King, Jr., and Malcolm X. WLC also co-sponsors events with other student organizations.

Finally, there seems to be confusion about who WLC represents. The goal of WLC is to promote gender equality in the legal community and society. Merely because WLC has the word "women" in its title does not mean that WLC represents the interests of all women. The National Organization for Women, NOW, also has the word "women" in its title; however, NOW clearly does not represent the interests of all women. Nor does the San Diego Lawyer's Club represent the interests of all lawyers in San Diego. For WLC to claim that it represents the interests of all women at USD would be presumptuous and unrealistic.

Linda Marie Bell, Director of Fundraising ***USD Law '93***
Michele Kiraly, Director of Publicity ***USD Law '93***
On behalf of Women's Law Caucus

ON THE RIGHT from page 16 .

know that you would love or loathe the guy no matter what his economic plan looked like. The "economic crisis" was a tool employed (effectively) by the press to bolster support for Clinton by providing an "objective" indicator of President Bush's failure.

In reality, the election was just another battle of an ongoing war in which the sparring sides are becoming increasingly polarized. It is an ideological war between conservativism and liberalism, in which the centuries-old conflict between essentialism and existentialism has become crystallized. On the legal front it is a contest between natural law theory and positivism. Natural law theory suggests that law must have some foundation in morality; positivism holds that law cannot be based in morality. The views are mutually exclusive: one is right and the other is wrong. Compromise is analytically impossible.

We should have realized the illogic of the phrase "you can't legislate morality" long before it became popular. Liberals say that law should only prevent us from "harming" other "persons." But why should we be prevented from doing so? The patent answer is that it is wrong to harm others - it is immoral. The touchstone of law is not "harm" (whatever that means) but wrong. And liberals have been unable to suggest a reason that "harm" and "wrong" are coterminous. We know that murder, racism, pornography, and drug use are wrong by resorting to the same instrument: our consciences. The liberals' attempt to replace morality (the true foundation of law) with "harm" has no basis in logic.

It also has no basis in experience. As William Bennett wrote earlier this year, our nation's gravest problems spring from a decline in moral values. "This is true," said the Czar, "whether we are talking about abortion, AIDS, births to unwed mothers, child abuse, crime, drug use, educational decline, race relations, urban unrest or welfare dependency. Political philosophers from Aristotle to our founders have understood that all real politics must concern itself with the character of the citizenry and the moral precepts that underlie society."

Bennett's claims were borne out by statistics in a *Wall Street Journal* article published on March 15. Between 1960 and 1990, violent crime has increased 560%; illegitimate births, 419%. Teen suicide rates have doubled, the percentage of children in single-parent homes has tripled, and divorce rates have quadrupled. The number of abortions has steadily increased since *Roe*, and the total has now reached 28 million, even though birth control has become omnipresent. The Great Depression, Nazi Germany, Imperial Japan and the Soviet Union posed less of threat to our nation's existence than our present moral and spiritual decay.

All of this accords with common sense. Choices about moral, "private" matters have causal effects which cannot be isolated. Every action has the capacity to affect society, just as a pebble can send waves rippling throughout an entire pond. Drive-by shootings, drug money robberies, all of the financial deprivation and human degradation caused by drugs would not have happened but for a few hippies innocently smoking joints and "harming" no one. Morally wrong conduct, sooner or later, will damage society as a whole.

"Legalization" - of drugs, prostitution, whatever - is not the answer to our problems. Legalizing any prohibited activity will drastically increase its practice and suggest that it is morally permissible (thereby corrupting, and engendering disrespect for, the instrument of law). We will quickly remember exactly why the activity was illegal in the first place, but we will be faced with a nearly impossible task if we try to implement restrictions on the activity, much less prohibit it again. Legalization is not a solution; it is surrender.

Let's admit it, kids: Liberalism has failed. It was an interesting idea, but the past three decades have proven it to be a self-destructive, vicious regress. It is time to deposit liberalism and its positivistic jurisprudence in the junk yard of bad ideas, where future generations can view it from a safe distance and debate whether liberalism or communism was the failed sociopolitical experiment of the millennium. We must recognize that law exists to sustain society by protecting the public morals, and that obsequious legislators who ignore or demean the tough issues of morality and virtue are unworthy of writing laws. We must eliminate the right to privacy, a judge-made doctrine founded in the existence of chimerical "penumbras" and fabricated to facilitate judicial "legalization." We must acknowledge the difference between right and wrong, and we must hold people accountable for their actions.

Restoration will be difficult. The convenient "law without morality" illusion panders to core instincts of our hedonistic and irresponsible society. But we have no choice; our situation is too desperate for us to continue the self-deception. We need to return to the mores of our grandparents for the sake of our grandchildren. Continuing farther down this path will prevent us from ever turning back, and we might as well start "praying to the demons."

Now then, you may have noticed that I've never apologized for anything I've written. There's a reason for that - I'm not sorry. I meant every word of it. If I annoyed you and you responded with a bitchy, *ad hominem* letter, then you are too sensitive about your own cognitions being contradicted. I suggest you abandon law for a field in which logic and argumentation are unimportant.

I'll leave the rest of you, whether or not you agreed with me (by the way, most of you agree with most of what I've said - in other words, we are the majority) with a few thoughts. You're a great bunch of optimistic, friendly people who have helped make law school better than college, and I wish you well. I seriously wish we could all stay here another year (but, oh well). If you're not graduating in May, take Cole for something (he's hilarious). Finally, try to preserve your intellectual integrity. Discursive reasoning is that which separates us from the animals.

DIVERSITY from page 14

I imagine some minority students resent the burden of being stereotyped as experts on issues surrounding racism.
Most came to law school to become lawyers, not to teach their white counterparts about race and the law.

Once use of race to implement policy is "out of the bag," there is room for abuse by those who are inclined to do so. This is because it is very difficult to determine the true motive of those implementing a certain policy. Someone wishing to carry out a harmful act could couch it in a positive motive. For example, an all white school might be created, much like an all female or an all black school, supposedly for the benefits that a racially homogeneous environment provides. Who could tell whether those running the school were motivated by hate, or by a genuine commitment to education? The only way to prevent such abuses is to restrict the use of race severely. Those who have truly good motives should be able to carry them out without using race, although it may be slightly more difficult.

African-Americans have certainly been wronged by our society. The original goal of affirmative action was to correct these wrongs. It seems, however, that this program has been distorted into something with goals less admirable. The use of race was only proper in that original context of correcting past wrongs. Race should not be used to implement some ideal that happens to be the current fad of the day.

FURAY from page 20

research, explain what the support groups are and what they do. I think this is highly appropriate. I have no problem with it.

"Treating a group as marginal, is that respecting the dignity of each human being? You do not treat human beings loved by God, and I do firmly believe that every single one of us is loved by God, with hate. Come on! Now that would be a fundamental inconsistency inside my being."

Child care on campus

Sr. Furay has also been instrumental in instituting share jobs and child care on the USD campus. She started share jobs in the early 1970s with the secretaries in her own office. Two secretaries, both with young children, were given permanent half-time positions which entitled them to receive full benefits. Since then, these share jobs have become available for several positions at USD, including many professional positions.

Sr. Furay stated: "What society was saying is, either you can work from eight to five, or you don't work at all, and we'll just kind of exploit you and bring you in part time and use you and then throw you away. That bugged me because American society gives a lot of lip service to the family, but boy, you better be able to work from eight to five."

Sr. Furay also spent many years trying to get a child care facility on campus. She did research comparing the U.S. to other developed countries. Her findings concluded that the only developed country with a child care system worse than the U.S. is South Africa.

"Child care is a national disgrace. We don't have any national child care policy. If we really think the family is important, and I believe it is, whether a single parent family or whatever kind of family it is, then we should facilitate the work life and the personal life."

Sr. Furay has been pushing the idea of a child development center since the late 1970s. According to Furay, people eventually caught on to the idea, and in recent years the Manchester family and others have donated the money to build the Manchester Child Development Center.

Since a replacement for her position has not yet been selected, Sr. Furay has put off planning what she will do when she retires. She does plan to leave San Diego for at least a year to give her replacement a fair start in his or her new position.

"Take me out to the ball game.
Don't forget tons of cash.
To buy me a ticket and parking rights,
You' ll have to take out a loan tonight.
For it's at least 10 dollars admission
And lots more for food and for beer
'Cause it's 5, 6, 7 mil for Bonds
At the old ball game."
Eric Siegler

America's Game: Spring Baseball Picks

By Eric Siegler
Motions Staff Writer

It's that time of year again when the crack of the bat can be heard. When popcorn and peanuts and crackerjacks fly through the air. That's right, it's baseball season, and with a look into the crystal ball, here are the way things might come out.

NL EAST	NL WEST	AL EAST	AL WEST
Montreal	Cincinnati	NY Yankees	Chicago
St. Louis	Atlanta	Toronto	Kansas City
NY Mets	Houston	Baltimore	Texas
Chicago	Los Angeles	Cleveland	Oakland
Pittsburgh	San Francisco	Milwaukee	Minnesota
Philadelphia	Colorado	Boston	Seattle
Florida	San Diego	Detroit	California

MOTIONS Top Ten

Thoughts of Law Students During Final Exams:

10. I don't recognize half the people in this room.
9. I could swear the professor said "open book."
8. I should have gotten an MBA instead.
7. Where's the extra credit question?
6. That fifth cup of coffee was a bad idea.
5. Where's the wiseguy who told me Gilbert's is all I need to know for this course?
4. Isn't this the paralegal program?
3. Where do they get those proctors?
2. Everyone's on their third blue book and I'm still outlining!
1. Did I really vote for Brad Fields?

AMERICA'S TEAM?: *No. A bankruptcy lawyer's dream - yes. Not even Barry Bonds could get this motley crew out of debt. The Czar (far right) looks more pleased than usual with his team's performance. He even managed to grin.*

Flood v. Kuhn: Blackmun on Baseball

Mr. Justice BLACKMUN delivered the opinion of the Court.

I

The Game

It is a century and a quarter since the New York Nine defeated the Knickerbockers 23 to 1 on Hoboken's Elysian Fields June 19, 1846, with Alexander Jay Cartwright as the instigator and the umpire. The teams were amateur, but the contest marked a significant date in baseball's beginnings.

That early game led ultimately to the development of professional baseball and its tightly organized structure. The Cincinnati Red Stockings came into existence in 1869 upon an outpouring of local pride. With only one Cincinnatian on the payroll, this professional team traveled over 11,000 miles that summer, winning 56 games and tying one.

Shortly thereafter, on St. Patrick's Day in 1871, the National Association of Professional Baseball Players was founded and the professional league was born.

The ensuing colorful days are well known. The ardent follower and the student of baseball know of General Abner Doubleday; the formation of the National League in 1876; Chicago's supremacy in the first year's competition under the leadership of Al Spalding and with Cap Anson at third base; the formation of the American Association and then of the Union Association in the 1880's; the introduction of Sunday baseball; interleague warfare with cut-rate admission prices and player raiding; the development of the reserve "clause"; the emergence in 1885 of the Brotherhood of Professional Ball Players, and in 1890 of the Players League; the appearance of the American League, or "junior circuit," in 1901, rising from the minor Western Association; the first World Series in 1903, disruption in 1904, and the Series' resumption in 1905; the short-lived Federal League on the majors' scene during World War I years; the troublesome and discouraging episode of the 1919 Series; the home run ball; the shifting of franchises; the expansion of the leagues; the installation in 1965 of the major league draft of potential new players; and the formation of the Major League Baseball Players Association in 1966.

Then there are the many names, celebrated for one reason or another, that have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in-season and off-season: Ty Cobb, Babe Ruth, Tris Speaker, Walter Johnson, Henry Chadwick, Eddie Collins, Lou Gehrig, Grover Cleveland Alexander, Rogers Hornsby, Harry Hooper, Goose Goslin, Jackie Robinson, Honus Wagner, Joe McCarthy, John McGraw, Deacon Phillippe, Rube Marquard, Christy Mathewson, Tommy Leach, Big Ed Delahanty, Davy Jones, Germany Schaefer, King Kelly, Big Dan Brouthers, Wahoo Sam Crawford, Wee Willie Keeler, Big Ed Walsh, Jimmy Austin, Fred Snodgrass, Satchel Paige, Hugh Jennings, Fred Merkle, Iron Man McGinnity, Three-Finger Brown, Harry and Stan Coveleski, Connie Mack, Al Bridwell, Red Ruffing, Amos Rusie, Cy Young, Smokey Joe Wood, Chief Meyers, Chief Bender, Bill Klem, Hans Lobert, Johnny Evers, Joe Tinker, Roy Campanella, Miller Huggins, Rube Bressler, Dazzy Vance, Edd Roush, Bill Wambsganss, Clark Griffith, Branch Rickey, Frank Chance, Cap Anson, Nap Lajoie, Sad Sam Jones, Bob O'Farrell, Lefty O'Doul, Bobby Veach, Willie Kamm, Heinie Groh, Lloyd and Paul Waner, Stuffy McInnis, Charles Comiskey, Roger Bresnahan, Bill Dickey, Zack Wheat, George Sisler, Charlie Gehringer, Eppa Rixey, Harry Heilmann, Fred Clarke, Dizzy Dean, Hank Greenberg, Pie Traynor, Rube Waddell...Lefty Grove. The list seems endless.

And one recalls...all the other happenings, habits, and superstitions about and around baseball that made it the "national pastime" or, depending upon the point of view, "the great American tragedy."

ARMENIA from page 14

Bordered by Turkey, Soviet Georgia, Azerbaijan and Iran, the landlocked country of Armenia continues in its history battered by war and conflict. Armenia is a country rich in tradition which struggles to keep its culture alive among its people. For more than 3000 years, its political boundaries have been altered by conquest and war.

The growth of Armenian nationalism, which followed the promulgation of the Armenian national constitution in 1863, created a ferocious backlash. Turkish soldiers and police burned the Armenian quarter of Constantinople in 1876, and massacres begun in 1894 resulted in the slaying of 200,000 Armenians in two years. Then, after a change in regime, the Young Turk government attempted to settle the situation by physically annihilating the Armenians. 30,000 were killed in 1909, followed by the mass genocide of 1915-1923 which resulted in the deaths of 1.5 million people, and the exile of 500,000 others. Thus, the Turks succeeded in eliminating three-fourths of the Armenian population from their native homelands in Eastern Turkey. At the conclusion of World War I, the Allies promised to reestablish an independent Armenian state. The promise was never fulfilled.

Fast forward, keeping in mind the history. Today, Armenians are still fighting for their culture, their religion, their traditions and their lives. The most recent five-year old conflict with Azerbaijan is over the largely Armenian-populated territory of Nagorno-Karabakh.

According to Hafiz Pasaev, the Ambassador to the United States of the Republic of Azerbaijan, the heart of the conflict is about the peaceful attempts by the people of Nagorno-Karabakh to seek the right of self-determination. He also said that Armenia had never been a party to the conflict while voicing its support for the constitutional rights of the people of Nagorno-Karabakh. Armenia has consistently called for an immediate cease-fire and resolution through peaceful negotiations.

Pasaev even bragged in a letter to the *Washington Post* about the situation: "Azerbaijan's response to Armenia's position has been to take aggressive action to draw Armenia into the conflict. One of the earliest punitive steps taken by Azerbaijan was the imposition of a partial and then full blockade of all connecting lines, through which Armenia has received more than 85% of its fuel and food. In recent months, Azerbaijan has made even more aggressive attempts to draw Armenia into conflict by bombing villages and towns near the border of Armenia and Azerbaijan. Despite these actions, Armenia remains committed to the peace process...and has been an active and constructive participant in negotiations."

As a result, in late March the United States Congress began to consider a resolution condemning Azerbaijan for its blockade of Armenia. It passed shortly thereafter. The consideration process brought forward stories of Armenian suffering caused by the blockades - people tearing up floor boards and stripping park trees to use as firewood and setting buckets under melting ice to use as drinking water for children. Schools have long been closed, and the energy embargo has devastated the landlocked country that was once dependant on oil-rich Azerbaijan for most of its energy.

Now tens of thousands of Armenians are at risk of death by starvation and exposure because of the blockade, according to the U.N. High Commissioner for Refugee Affairs, since the blockade has cut food, fuel, medicine and other humanitarian supplies to Armenia.

In early April, Nagorno-Karabakh defense forces struck an offensive deep into Azerbaijan, seizing an area which linked the disputed area of Nagorno-Karabakh with Armenia. The Clinton Administration was quick to condemn the action, and then Turkey retaliated by closing its borders for overland relief to Armenia. Guerrillas blew up gas pipelines leading to Armenia, and the Armenians were forced to cut back even further on their use of electricity.

Following this action, the Azerbaijan Vice-President, Hossein Panahov, met with Irani President Rafsanjani to discuss Iran providing "material and spiritual aid" to prevent the takeover of more disputed land. Following the meeting, Rafsanjani said Iran will take "concrete measures" if fighting continues between Armenia and Azerbaijan.

The healing of nations will begin when we see ourselves as members of a world community. Condemnation of any nation is not helpful. The Executive branch of the U.S. government should reconsider its position on the recent actions in Nagorno-Karabakh in light of the history and the reality of the people who are struggling to survive.

April 24 is Armenian Martyrs Day. It marks a day when once a year Armenians gather to remember their history. Regardless of our ethnicity, it would serve us well for each of us to look back at our own history. Look back with a critical, yet sympathetic eye that will ease us out of denial and into an inter- and intra-national healing process.

This process is the key to both our survival as a world community and our growth individually, as nations, and as people.

Interview with the Provost

Sister Furay to Retire As Soon As Replacement Chosen

By Laleaque Grad

If you ask anyone who has been around this campus for a while to comment about what he or she thinks of Sister Sally Furay, you will undoubtedly be bombarded with such responses as: "integrity," "conscience," "spiritual," "champion of academic freedom," "advocate of student rights," and "feminist." The more people you find who have worked and interacted with her, the more praise you will hear.

Sr. Furay is USD's Provost and Vice President of Academics. She has been here at USD and its predecessor, the San Diego College for Women, since 1952.

Just about everyone who knows Sr. Furay knows that she will be retiring as soon as a suitable replacement is selected and available to begin work, which should be before the end of the next academic year.

I recently talked to Sr. Furay about her work over the past decades and how she has contributed to the development of the Law School, from which she herself graduated in 1972.

Sr. Furay decided to attend law school because she believed it would help her in her career. At the time, she had already earned a Ph.D in English Literature from Stanford and recently been appointed Academic Dean at the San Diego College for Women, which soon after merged with the men's college to form the co-ed University of San Diego.

She attended USD School of Law at night while retaining her position as Academic Dean. She graduated from law school on May 27, 1972, and just about a month later, on July 1, was selected as the USD Provost, the position to which the Dean of the Law School reports.

Sex discrimination class

Only a year later, she was already back, pushing for a class on sex discrimination at the Law School. Sr. Furay explained that her awareness of the disparate positions of women and men in society was limited before she graduated from law school.

'It's my very firm belief that the university deals with the pursuit of truth, and you do not reach truth by looking at one side of the question.'

"Being a member of a congregation of women, where women did everything, it quite literally never occurred to me that there was anything women couldn't do as well as men because I, for all my years, had seen women doing what I later discovered was what men were supposed to be doing in society," said Furay.

She suddenly confronted the realty of the bias and discrimination women experience when she was researching the graduation speech on "The Changing Role of Women" for a local girl's high school in 1972.

Sr. Furay remembers first going through the materials prepared for her by her research assistant on the salary, position, and treatment of women in the work place: "I read the stuff, and I was appalled. This is unjust and we've got to do something about it. It's the data that raised my consciousness. I've been a crusader ever since."

After persuading the Law School faculty that sex discrimination was a legal subject, Sr. Furay teamed up in 1973 with Lynn Schenk, now a Congresswoman, and Judith McConnel, now a judge for the Superior Court of California, to teach "Sex Discrimination," which has been part of the Law School curriculum ever since.

Sr. Furay characterizes herself as a feminist. I asked her what feminism means to her.

"What I stand for as a feminist is the right of every human being to develop their inner potential without stereotypes from society interfering with that. And frankly, that's also the heart of my religious belief. When I read the New Testament, what Christ was talking about was love and freedom. If you don't have freedom, you are inhibited in expressing love. To be fully free you have to be able to grow or develop from the inside toward what you see God wanting of you.

"One of the things that angers me about some feminists is that they say you can't be a feminist unless you say that you are pro this or that. That's exactly what I am against. I'm against anybody telling me what I have to think. I object to that.

"Frankly, I'm in favor of a men's liberation movement, too. There are a lot of stereotypes about men in our society. People teach little boys that men don't cry. Why the heck not? What's the matter with the expression of a perfectly reasonable and appropriate human emotion? We stereotype men as well as women. The societal effects of the stereotypes on women are worse, but the personal effects on men can be very detrimental."

Sr. Furay noted that she has included sex discrimination that is aimed at men, particularly in the area of child custody, and homosexuals in the law school course she teaches.

"If the class was entitled 'Women in the Law,' I would refuse to teach it. It is called 'Sex Discrimination,' and sex discrimination has been predominantly against women, but by no means altogether. There has been much more discrimination against gay men than there has been against lesbians."

I asked Sr. Furay if her devout commitment to her religion has ever made her uncomfortable about teaching issues such as reproductive choice and homosexual equality in the classroom. She responded with a firm "No."

She explained: "It's my very firm belief that the university deals with the pursuit of truth, and you do not reach truth by looking at one side of the question. That's harder to do in a controversial issue. But, because it's harder to do doesn't mean you don't do it.

"I will always insist when I teach the students, whether they are pro-abortion or anti-abortion, that they look at both sides of the question. I simply don't allow the students to become advocates for one side or another. I say we are looking and analyzing the pros and the cons of how well these cases are put together, how valid are the arguments, what the law is based on."

Role of Catholic university

Sr. Furay's commitment to freedom of education is reflected in her support for allowing the Gay and Lesbian Law Students Association (GALLSA) on campus.

"This university's two fundamental values are a belief in God, whatever terminology people use, and a belief in the dignity of each human being.

"It's awfully difficult to be gay or lesbian on a Catholic campus. And I think that they need a support system. God loves us all, whether you are black, white, female, male, heterosexual, homosexual, poor, or rich. God loves us all. Everyone should be treated that way.

"It is not appropriate for a Catholic campus, because of the nature of the institution, to have people engaged in advocacy of a lifestyle in opposition to Catholic principles, but they [GALLSA] understood that.

"There are all kinds of things you can do besides advocacy. Sure, you can bring in speakers. Again, we are a university. Speakers aren't there to try to turn anybody into a heterosexual or a homosexual. They are there to explain, on an intellectual level, I hope, because this is a university, the various factors of it - the legal factors, the psychological factors, the

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Sister Surprise

By Larissa Kehoe

Motions Staff writer

The Women's Law Caucus honored Sister Sally Furay, Provost of the University of San Diego, for her accomplishments in the field of law on March 24 in anticipation of her coming retirement. The WLC clothed the surprise event as a speaking engagement to feature Sister Furay and the Hon. Judith McConnell discussing the genesis of the Sexual Discrimination class which they, along with Congresswoman Lynn Schenk, started at the School of Law.

Sister Furay spoke first, describing the process of generating a course description and curriculum for the class and then getting faculty approval.

Sister Furay had just graduated from the School of Law and passed the bar when she was appointed Provost of the University. She got out just in time, she said, joking, "Wouldn't it have been awful for the Law School to report to its student?" It was after joining the Lawyer's Club, an organization started by women attorneys in San Diego, that Sister Furay, along with Judge McConnell and Congresswoman Schenk, conceived the idea for the sexual discrimination class in 1973.

After gathering course descriptions from eminent schools around the country, the group put together a curriculum which generated a 20 page packet which she presented to the law faculty. The faculty agreed at the time to approve the course for one year; however, said Sister Furay, "I never heard anything again about that one year!"

"It's pretty hard to turn down your boss," joked the Provost.

Once Judge McConnell, who sits on the Superior Court of California, took the podium, the true purpose of the gathering became clear. Of Sister Furay, Judge McConnell said, "She looks like such a proper person, but she's really a wild woman!"

"Do not ever underestimate the power of this woman," she continued, relating that it was difficult to get faculty approval for the Sexual Discrimination course.

Stereotypes about both women and nuns are dispelled when one meets Sister Furay, said Judge McConnell, who told a story about Sister Furay who, while wearing a habit at lunch, ordered a "Blue Nun" to make everyone laugh and relax. "It's a great example of her personality and sense of humor," said Judge McConnell. Judge McConnell also spoke about Sister Furay's strong commitment to having a diverse faculty at the Law School.

Dean Strachan, too, spoke about Sister Furay: "One of the primary attractions about the job [of Dean of the Law School] was the chance to work with her." Sister Furay did "a lot of mentoring" and has been "the conscience of this law school," said the Dean.

Sister Furay has been a fierce guardian of academic freedom, continued Dean Strachan. "She has insisted, with her traditional toughness, on balance.... She has insisted that as an educational institution we help people come to informed judgments, and you can't do that without balance."

Sister Furay symbolizes "integrity for the law school," concluded the Dean.

After the speakers, the WLC presented Sister Furay with a clock, engraved with the words, "To Sister Sally Furay, whose strong courage and conviction inspire us."

At the reception following, law school faculty members spoke of Sister Furay with great respect and fondness. Prof. Grant Morris said, "The law school is going to be losing a very close friend." Prof. Morris, who has twice served as Acting Dean of the Law School, spoke of the sense of trust he had working with Sister Furay: "She would give you advice and counsel, but she would leave the decision up to you."

Prof. Hugh Friedman also praised Sister Furay, recalling the first time he met her, "in habit and in class." "I knew then she was such an outstanding student that she would make a great mark.... Very fortunately for us she settled here." Although the law school has been called St. Thomas More, he continued, "To me, the school is 'St. Sister Sally Furay....' She's our patroness."